SUPREME COURT OF THE UNITED STATES.

No. 65.

437.

JOHN M'LEARN AND OTHERS, APPELLANTS,

VERSUS

ARCHIBALD M'CLELLAN AND WIFE AND OTHERS.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF GEORGIA.

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UNITED STATES OF AMERICA.

To the Honorable the Justices of the Sixth Circuit Court of the United States for the district of Georgia, having jurisdiction in equity—between

JOHN M'LEARN, MARY M'LEARN, GEORGE M'KAY and JANET M'KAY his wife, and MARY M'LEARN, the elder, complainants.
and
JAMES WALLACE, administrator of JAMES HENDLEY M'LERAN (otherwise M'LEARN), and ARCHIBALD M'CLELLAN, and MARY M'CLELLAN his wife, defendants.
} IN EQUITY.

(*Bill of complaint of Jno. M'Learn and others.*)

Humbly complaining, show unto your honors, your orators and oratrixes, John M'Learn, of the city of Glasgow, in Scotland, an alien and subject of the King of Great Britain; Mary M'Learn, of Glasgow, aforesaid, an alien and subject of the king of Great Britain; George M'Kay, of Old Kilpatrick, in Scotland, aforesaid, and Janet M'Kay, his wife, both aliens and subjects of the king of Great Britain; and Mary M'Learn, of Old Kilpatrick aforesaid, an alien and subject of the king of Great Britain; that James Hendley M'Learn, otherwise M'Leran, late of the county of Chatham, in the said district of Georgia, a citizen of the United States, departed this life sometime in the year of our Lord one thousand eight hundred and twenty intestate, and without issue, having as his next of kin, your orator, John M'Learn his paternal uncle; your oratrix Mary M'Learn, his first cousin; your oratrix Janet wife of your oratrix George M'Kay; and your oratrix Mary M'Learn, his paternal aunts. That the said James Hendley M'Leran, otherwise M'Learn, died seized and possessed of a large real and personal estate, in the county of Chatham aforesaid, and that a short time after his death administration of all and singular the goods and chattels, lands, and tenements, rights, and credits, which were of the said intestate, was granted in due form of law, by the honorable the justices of the inferior court of Chatham county, in the state of Georgia, to James Wallace, of the said county of Chatham, a citizen of, and resident within the said state of Georgia. That the said James Wallace, thereupon was duly qualified as administrator of the said estate of the said intestate, took upon himself the burthen of the execution of that office, and took into his possession and custody the whole of the property and estate, real and personal, which were of the said intestate, of the value of fifty thousand dollars and upwards.

And your orators and oratrixes further show unto your honors, that the said intestate was not indebted at the time of his death in a sum exceeding eighteen thousand dollars; that the principal debt for which the estate of the said James Hendley M'Leran, otherwise M'Learn, was responsible, that is, for which the land and slaves left by him were bound, was a debt due by Archibald M'Learn, the father of the said intestate, to one Peter T. Marchant, in his own right, or as agent or attorney of one Elizabeth Ann Williamson, for and on account of the purchase of a tract of rice land on Argyle Island, in the said county of Chatham, called Gowrie, of which the said Archibald died seized, and which land (with all other the said Archibald's estate) was devised in and by the last will and testament of the said Archibald M'Learn to his son the said intestate; that when the said Archibald M'Learn, purchased the said land from the said Elizabath Ann Williamson,

or Peter T. Marchant, he executed and delivered a mortgage thereon to secure the purchase-money of the same, or a great portion of such purchase-money; and subsequently the said Peter T. Marchant obtained a judgment in the sixth circuit court of the United States for the district of Georgia against the said Archibald M'Learn, for the balance due by the said Archibald M'Learn on account of the purchase of said tract of rice land or plantation called Gowrie. That one William J. Scott, late of the county of Chatham, aforesaid, became the purchaser and assignee, for valuable consideration, of the debt so due by the said Archibald M'Learn at his death, and held the same during the minority of the said intestate, and while the estate of the said Archibald was in the hands and under the management of the said James Wallace, and one Henry M'Alpin, who were the executors of the said Archibald's last will and testament.

That immediately after the arrival at the age of twenty-one years of the said intestate, when the said intestate applied to the said executors of his father's will to deliver to him all the estate, real and personal, including the said plantation called Gowrie, bequeathed and devised to him in and by his father's said will, the said intestate was informed by the said executors, or by the said James Wallace, that he could not be permitted to receive the property, unless he first liquidated the said demand of the said William J. Scott, and delivered to the said William J. Scott a new mortgage to secure the same debt. That the said intestate, James H. M'Leran, who at this period had just passed his twenty-first year, was anxious to come to the possession of his property, and under the guidance of the said executors of his father's will, on or about the first day of May, in the year of our lord one thousand eight hundred and twenty-eight, executed and delivered to the said William J. Scott a mortgage on the said plantation called Gowrie, and on several negro slaves, to secure the payment of the sum of seventeen thousand eight hundred dollars, that being the sum then due by the estate of the said intestate's father, in manner and on the account of the purchase of said plantation called Gowrie, as aforesaid, to the said William J. Scott. That subsequently the said William J. Scott, for a valuable consideration, assigned the said mortgage to The Marine and Fire Insurance Bank of the state of Georgia, which now holds the same, claiming to be due thereon the sum of thirteen thousand three hundred and fifty dollars, with interest at eight per cent, from the first day of May, eighteen hundred and twenty-nine.

And your orators and oratrixes further show unto your honors, that being the next of kin to the said intestate, and standing to him in the several relations by blood as herein before set forth, they are by law entitled to receive the whole estate of the said intestate; that although they cannot hold real estate in Georgia, being aliens, yet they can take, and are entitled under the law of Georgia, to receive the proceeds in money of the sale of real estate; and that the said administrator is bound to sell the real estate of the said intestate, and to pay the proceeds of such sale to your orators and oratrixes; and your oratrixes and orators further show, that being so entitled as aforesaid, they have in a friendly manner applied to the said James Wallace, administrator as aforesaid, and requested him to render to them a just and true account of the estate of the said intestate, to sell the real estate, and to pay over to them the proceeds thereof, and to deliver to them all the personal estate; and your orators and oratrixes well hoped that the said James Wallace, administrator as aforesaid, would have complied with such their reasonable request; but now, so it is, may it please your honors, that the said James

Wallace, combining and confederating with one Archibald M'Clellan, and with one Mary M'Clellan, his wife, and with divers other persons, now to your orators and oratrixes unknown, but whom when discovered they pray may be made parties hereto with apt word to charge them, refuses to account with your orators and oratrixes concerning the said estate, the said James Wallace, and the said Archibald M'Clellan and Mary his wife, pretending that your orators and oratrixes, although next of kin to the intestate, are not entitled to any share in his real estate, and pretending that the said Mary M'Clellan is the only next of kin of the said intestate in the United States, and entitled to all the real estate; whereas your orators and oratrixes charge, that they are entitled to all the estate of the intestate, to the personal estate, absolutely and in kind, and to the proceeds of the sales of the real estate, and that the said Mary M'Clellan is not of kin to the said intestate, and is not entitled to any share in his estate; and the said James Wallace and his said confederates sometimes pretend that the real estate of the said intestate cannot be sold; that all the personal estate of the said intestate is to be applied to the discharge of the said mortgage; that the said land is to be exonerated and relieved from the payment of any part of said debt; and that it will exhaust all the personal estate to pay the debt. Whereas, your orators and oratrixes charge that the said real estate of the intestate can legally be sold; that the said real estate so under mortgage as aforesaid, is bound to pay the said mortgaged debt; and that the personal estate of the testator is not first to be applied in exonerating the said mortgaged land; all which actings and doings, and pretences of the said James Wallace, and the said Andrew M'Clellan and Mary M'Clellan, are contrary to equity and good conscience, and tend to the manifest injury of your orators and oratrixes. In tender consideration whereof, and forasmuch as matters of this nature are properly and peculiarly cognizable in a court of equity; to the end, therefore, that the said James Wallace, administrator as aforesaid, may, on oath, true and perfect answer make to all and singular the matters hereinbefore set forth, as fully and particularly as if the same were here again repeated; and more especially that the said James Wallace may, in manner aforesaid, set forth and declare:

Whether the said James Hendley M'Leran did not die intestate and without issue, at or about the time above set forth? Whether administration of his estate has not in due form of law been granted to the said James Wallace? Whether the said James Wallace has not taken possession of all and singular the estate, real and personal, of the said James Hendley M'Leran: of what such estate consists, and the value thereof? Whether your orator, the said John M'Learn, and your oratrixes, the said Mary M'Learn, Janet, wife of your orator, George M'Kay and Mary M'Learn, are not the next of kin to the said James Hendley M'Leran living at his death?

Whether your said orator and oratrixes last aforesaid do not stand in the degrees of relationship to the said James H. M'Learn respectively, as hereinbefore declared? Whether the said Archibald M'Learn, the father of the said James H. M'Learn, did not purchase the said plantation called Gowrie, from Mrs. Elizabeth Ann Williamson, or Peter T. Marchant, her attorney, or from some other, and what person? Whether he did not mortgage the same to secure the payment of the purchase-money or some part thereof? Whether the said Archibald did not leave a large portion of the debt which he incurred by the purchase of said plantation unpaid at his death, and how much was at the time due on the purchase?

Whether the said Archibald M'Learn did not die seized of the said plantation?

Whether the said Archibald M'Learn did not, in and by his last will and testament, bequeath and devise all his estate (including the said plantation) to his son the said James Hendley M'Learn?

Whether the said mortgage executed by the said James Hendley M'Learn to the said William J. Scott, was not given to secure the balance of the purchase-money of said plantation which was left unpaid by his father? Whether the land mortgaged by the said James H. M'Learn is not the same land purchased by his father, and on account of the purchase of which the said debt was due? Whether the said James Wallace was not one of the executors of the will of the said Archibald M'Learn? Whether the said James Hendley M'Learn, immediately on his attaining his age of twenty-one years (or when), did not apply to receive the estate and property bequeathed and devised to him by his said father's will? Whether the said James Hendley M'Learn was not required, and by whom, to execute the said mortgage to William J. Scott, before he was suffered to receive his property given to him by said will?

And whether the execution of the said mortgage was not directly after the said James H. M'Learn arrived at age, or how soon thereafter, and under what circumstances it was executed? And that the said Andrew M'Clellan and Mary M'Clellan may set forth what claim or right they pretend to have in or to the estate, real or personal, of the said James Hendley M'Learn. That the said James Wallace may be compelled to exhibit a true, full, and perfect account of the estate of the said James H. M'Learn, and of all and singular the rents, issues, and profits thereof, showing what debts have been paid, and what may remain unpaid; what property, real and personal, is now in the hands of the administrator, and what balance in cash remains in his hands. That your orators and oratrixes may be declared entitled to the estate, real and personal, of the said James Hendley M'Learn. That the same may be delivered to them, and the cash in the hands of the administrator may be paid to them.

That the said Andrew M'Clellan and Mary M'Clellan may be decreed to have no interest in the said estate, and that your orators and oratrixes may have such further and other relief as may be consistent with equity and good conscience.

May it please your honors to grant unto your orators and oratrixes the United States' writ of subpœna, to be directed to the said James Wallace, Andrew M'Clellan, and Mary M'Clellan, commanding them at a day and place, and under a certain pain therein to be inserted, to be and appear before your honors to answer in the premises and to abide by and perform the decree of your honors therein. And your orators and oratrixes will ever pray, &c.

BERRIEN & CUYLER,
Solrs. for Complts.

Bill filed, 6 April, 1832.

GEO. GLEN, Clk.

UNITED STATES OF AMERICA, in the sixth circuit court district of Georgia, *ss.*
[L. S.] GEO. GLEN, Clk.

The President of the United States to James Wallace, administrator of James Hendley M'Leran, otherwise M'Learn, and Archibald M'Clellan and Mary M'Clellan his wife, greeting:

For certain causes offered before the honorable the sixth circuit court of the

United States for the district of Georgia, in chancery, you are commanded and strictly enjoined that, laying all other matters aside and notwithstanding any other excuse, you personally appear before the said court in the term of May next, on the tenth day of the month of May next, at Savannah, in the said district of Georgia, to answer to those things which shall then and there be objected to you, and to do further and receive what the said court shall have considered in this behalf; and this you may in no wise omit, under the penalty of one thousand dollars, and have there this writ.

Witness, The honorable JOHN MARSHALL, Chief Justice of the United States, this sixth day of April, one thousand eight hundred and thirty-two.

BERRIEN & CUYLER, Solr. for Complts.

Service acknowledged for the defendant, James Wallace.
6th April, 1832. W. W. GORDON, Sol.

I acknowledge service for Archibald M'Clellan and wife, 29 Sept. 1832.

RICH. W. HABERSHAM, Soltr. for M'Clellan and wife.

Marshal's Office, district of Georgia, Savannah, May 10, 1832.

The within named Archibald M'Clellan and Mary M'Clellan his wife, are not to be found within the district of Georgia.

The return of M. H. MOREL, Marshal district Georgia.

JOHN M'LEARN et al. compl'ts, and JAMES WALLACE, adm'or. JAMES H. M'LEARN, decd. et al. defts. } In the sixth circuit court, district of Georgia. IN EQUITY.

The answer of James Wallace, administrator of the goods and chattels and estate, which were of James H. M'Leran, deceased, one of the defendants to the bill of complaint of John M'Learn, Mary M'Learn, George M'Kay and Janet his wife, and Mary M'Learn, the elder, complainants. This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors, uncertainties, insufficiencies, and other imperfections in the said complainants' said bill of complaint contained for answer thereto, or to so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith, that he admits that James Hendley M'Leran died seized and possessed of a considerable real and personal estate, that he this defendant administered on his estate, and took possession thereof; and this defendant annexes hereto a copy of the inventory and appraisement of said estate, marked exhibit A, to which he would refer, which he saith is a true statement of all of said estate that ever came to his hands to be administered; that the said intestate was indebted, at the time of his death, in the manner stated in the said bill of complaint, the principal of which debts was that due to the said, the Marine and Fire Insurance Bank of the state of Georgia, on bond and mortgage of lands and negroes; that after the death of said intestate, the said bank, according to the course prescribed by the laws of the state of Georgia, foreclosed the said mortgage on the said plantation called Gowrie, including the said toll-mill, and the said small island, and in the month of May, eighteen hundred and thirty-two, sold the said lands at sheriffs' sales, whereby the said debt was paid, and the balance

of the proceeds of said lands was paid to this defendant, and is hereinafter accounted for; that the said bank had a lien for its debt on the lands so sold, and also on fifty negroes of said estate, and had the option to resort, in the first instance, to either the real or personal estate mortgaged, and that having been paid by the sale of real estate, as aforesaid, the personal estate was relieved from the incumbrance; that the defendant after the said sale, having no lands of said estate on which to work the said negroes, by leave of the court of ordinary of Chatham county, hired them out for the remainder of the year, and has accounted for the hire in his accounts hereto annexed. This defendant further answering, annexes hereto an account of all his receipts and disbursements for said estate, marked Exhibit B, to which he would refer, in which is particularly designated the sources of his receipts, and in said account is included several charges of money paid and advanced by this defendant to the complainant, John M'Learn, who when in this country not only acted for himself, but was the lawfully authorized agent of all the complainants, which charges, this defendant prays this court to allow to him against the said complainants, on a general settlement of said estate; this defendant believes it to be true that the complainants are, as they represent themselves, the next of kin of the said intestate, but they being all aliens, this defendant does not know whether they are heirs at law of the intestate, or what their rights in and to his estate are by the laws of Georgia, under the circumstances of this case; this defendant saith that the said plantation called Gowrie, and the said small island, was derived by the intestate from the will of his father, Archibald M'Leran; that it was purchased by the said Archibald M'Leran from one Mrs. Williamson, or one Peter T. Marchant, but whether mortgaged to secure the payment of the purchase-money, this defendant does not know; but this defendant saith, that the said Peter T. Marchant did obtain a judgment against the said Archibald M'Leran in this honorable court for the consideration or purchase-money of the said lands, which judgment was assigned to one William J. Scott; that the said intestate, when about to take possession of the estate of his father, was required by the executors of his father's will to settle said judgment; that accordingly the intestate paid up and satisfied said judgment by giving to the said Scott the mortgage aforesaid, which mortgage the said Scott afterwards assigned to said bank; this defendant was one of the executors of Archibald M'Leran and knows that there was a large balance due on said judgment at the time of his death, but the exact amount he does not know; this defendant annexes hereto a copy of said bond and mortgage, marked Exhibit C, to which he would refer, in which these facts are recited; this defendant further answering, saith that the negroes of said estate were sold by him in the due administration of said estate, partly for cash and partly on credit well secured; and this defendant has included in his account, of which Exhibit B is a copy, the proceeds of said sale, showing a balance of the sum of eleven thousand two hundred and ninety-eight dollars 48-100, to be in his hands in cash, and the bonds and mortgages of Charles Maingault for ten thousand dollars, which balance and securities, he this defendant is ready and willing to pay and deliver, as this honorable court shall decree: this defendant further answering, saith that the defendants, Archibald M'Clellan and Mary his wife, have claimed to be entitled to the real estate of the said intestate, in right of the said Mary M'Clellan, who is alleged to be a citizen of the United States, and as such, though more remote in blood to the intestate than the complainants, as yet entitled to inherit; that the said Archibald and Mary claim to be entitled to the said real estate, and to have

it exonerated from all debts by the application of the personal to the payment, whilst the complainants claim to be entitled exclusively to the proceeds of the personalty, without any deduction on account of the debts; that in these conflicting claims this defendant has found it impossible safely for him to act or decide, and therefore has deferred any division of said estate for the determination of this honorable court; and this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without there is any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, avoided, traversed, or denied, is true, to the knowledge or belief of this defendant. All which matters and things, this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and hereby prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

W. W. GORDON,
Sol. for J. WALLACE.

You, James Wallace, being sworn, say that the facts stated in the above answer, so far as they come to your own knowledge, are true, and so far as they are derived from the information of others you believe them to be true.

JAMES WALLACE.

Sworn to, before me, this 2d of May, 1833.
JNO. CUMMING, J. J. C. C. C.
Answer of James Wallace filed at Rules, 6th May, 1833.
GEO. GLEN, Clerk.

(*Answer of A. M'Clellan and wife.*)

UNITED STATES OF AMERICA, sixth circuit, Georgia district.

Between JOHN M'LEARN, MARY M'LEARN, GEORGE M'KAY and JANET M'KAY his wife, and MARY M'LEARN, the elder, complainants,
and
JAMES WALLACE, administrator of JAMES HENLEY M'LERAN (otherwise M'LEARN), and ARCHIBALD M'CLELLAN, and MARY M'CLELLAN, his wife, defendants.
} IN EQUITY.

The answer of Archibald M'Clellan and Mary M'Clellan his wife, of St. James', Santee, in the state of South Carolina, who are impleaded with James Wallace, of Chatham county, in the state of Georgia, to the bill of complaint of John M'Learn, Mary M'Learn, George M'Kay, Janet M'Kay, and Mary M'Learn, the elder, aliens.

These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of advantage and benefit of exception to the manifold errors, uncertainties, and insufficiencies in complainants' said bill contained, for answer nevertheless thereto, or to so much thereof as they are advised it is material for them to answer to, answering, say that James Henlen M'Lèran, called by the complainants James Hendley M'Learn, as they are informed and believe, died intestate, and without issue, but of the exact time of his death these defendants are not informed; being, as they have understood and believe, seized and possessed of a considerable estate, real and personal (but of the amount and particulars thereof they are ignorant), and

indebted, as they are informed, in a large sum of money, but how much these defendants do not know.

These defendants further answering, say that they have no knowledge of the relation of the complainants to the said James Henlen M'Leran, and cannot admit that the complainants are next of kin of the said James Henlen M'Leran, or related to him in the degree set forth in complainants' bill of complaint, or in any other degree. They have understood and believe that administration of the estate and effects of the said James Henlen M'Leran was committed to their co-defendant James Wallace, and that he took the custody and management of all the estate, real and personal, of the said intestate, but they do not know how or in what manner he has administered the same, except, as they have been informed and believe, that by his consent and approbation a valuable plantation, of which the said James Henlen M'Leran was seized at the time of his death, has been sold to satisfy a debt for which the said plantation was mortgaged, in preference to the sale of personal estate, although the personal estate was sufficient to satisfy the said debt, and was, as well as the plantation, mortgaged for that purpose.

These defendants are strangers to all the circumstances mentioned in the bill concerning the purchase of the plantation called Gowrie, by Archibald M'Leran, and his mortgage thereof to secure the purchase-money, and the devise to James Henlen M'Leran, and the taking up of that mortgage by James Henlen M'Leran, and his giving a new mortgage of the same plantation and of all his negroes to secure the same debt: and these defendants submit that the same facts, if proved, are no wise material to the issue in this case.

These defendants further answering, say that this defendant Mary is the first cousin of James Henlen M'Leran's late mother, Sarah Henlen, who was the daughter of Benjamin Henlen, of Black river, in the parish of Prince George Winyaw, who died about the year of our Lord (1781) seventeen hundred and eighty-one, and that Benjamin Henlen was the brother of this defendant's father, William Henlen, of Black river, in the parish aforesaid, who died about the year of our Lord (1778) seventeen hundred and seventy-eight; and that Benjamin Henlen's children all died without issue, except Sarah, who about the year of our Lord (1800) eighteen hundred, married Archibald M'Leran, and afterwards died in Georgetown.

That the said Archibald M'Leran, at the time of the marriage, was in very moderate circumstances, and that he received on his marriage with this defendant's cousin a good deal of property which laid the foundation, as these defendants believe, of his subsequent fortune.

That this defendant, Mary's father, William Henlen, left two children only, to wit, this defendant and her younger sister Sarah, who married Dr. George Ford, and died in the life-time of James Henlen M'Leran.

That the said James Henlen M'Leran, being then on a visit to his relations in South Carolina, attended the funeral of this defendant, Mary's sister, Mrs. Ford, and that these defendants never saw him afterwards. And these defendants in fact say that this defendant Mary is related to the said James Henlen M'Leran in the fifth degree, or that of first cousin one degree removed, and is the next of kin on the part of his mother, as by the table hereto annexed, reference being thereunto had, will more fully appear.

And these defendants insist that this defendant Mary, as heir at law of the said James Henlen M'Leran, is entitled to all the real estate of which he was seized and possessed at the time of his death; and that the personal estate

of the said James Henlen M'Leran is the proper fund for the payment of his debts, and more especially that the debt which was secured by a mortgage of lands and negroes should have been paid by a sale of the negroes; and that in case the complainants should prove themselves to be the next of kin to the intestate, these defendants are entitled to be reimbursed out of the personal estate for the amount taken from the real estate for the payment of the mortgage debt or any other debts. And these defendants deny all and all manner of combination and confederacy wherewith they stand charged, in and by the said bill of complaint; without that that any other matter or thing material for this defendant to make answer unto, and now herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. All which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

RICH. W. HABERSHAM,
Defdts. Solcr.

Personally appeared before me, Archibald M'Clellan and Mary M'Clellan, who, being duly sworn, made oath that the matters and things in the foregoing answer contained, so far as the same depend on their own knowledge, are true, and so far as they are derived from the information of others they believe them to be so: this 11 May, 1833.

JAMES JERVEY, Qu. and Dist. Clk.

ARCHD. M'CLELLAN,
MARY M'CLELLAN.

THE UNITED STATES OF AMERICA.

To the Honorable the Justices of the Circuit Court of the United States for the District of Georgia, having jurisdiction in Equity—between

ARCHIBALD M'CLELLAN and MARY M'CLELLAN his wife, Complainants, and JAMES WALLACE Administrator of JAMES HENDLEN M'LERAN or M'LAREN, and JOHN M'LEARN, MARY M'LEARN, GEORGE M'KAY and JANET M'KAY his wife, and MARY M'LEARN, the elder, Defendants. } IN EQUITY.

Humbly complaining, show unto your honors, your orator, Archibald M'Clellan, of St. James' parish, Santee, in the state of South Carolina, and your oratrix, Mary M'Clellan, his wife, late Mary Hendlen, who are citizens of the United States, and of the state of South Carolina, and were so on the first day of January, eighteen hundred and twenty-eight, and long prior thereto, that James Henlen M'Leran or M'Laren, late of the state of Georgia, now deceased, who was a citizen of the United States, was, at the time of his death, seized and possessed, or well entitled to a large real and personal estate in fee simple, then situate and being in the state of Georgia, a true schedule whereof, and of the appraisement thereof, duly made after his decease, according to law, or of some part thereof, marked Exhibit A, is hereto annexed, and which your orator and oratrix pray may be taken as a part of this their bill of complaint, and a great portion of which personal estate was originally the property of his mother Sarah M'Lellan, formerly Sarah Hendley, previous to her intermarriage, and which Sarah M'Leran was the

first cousin of the mother of your oratrix; and that the said James Hendlen M'Leran, after he had arrived at the age of twenty-one years, departed this life on or about the day of in the year of our Lord one thousand eight hundred and thirty, intestate, leaving your oratrix, exclusive of aliens, and your orator in right of his said wife, his sole next of kin; and your orator and oratrix show unto your honors, that your oratrix Mary M'Clellan is the sole surviving child of William Hendlen, late of the state of South Carolina, who departed this life before the decease of the said James H. M'Leran, and which William Hendlen was the brother of Benjamin Hendlen, who was the father of Mrs. Sarah M'Leran, the mother of the said James H. M'Leran the intestate; and that the said James Hendlen M'Leran departed this life, leaving neither mother, nor father, nor wife, nor child, nor children, or representative of child or children, or brother or sister of the whole or half blood, or representative of either, living at the time of his decease, or any other relative, a citizen of the United States, as near in kindred as your said oratrix.

And your orator and oratrix further show unto your honors, that soon after the decease of the said James Hendlen M'Leran, the said James Wallace, who is a citizen of the state of Georgia, and residing therein, applied to and obtained from the proper court of Chatham county, and state of Georgia, letters of administration upon the estate and effects, goods and chattels, rights and credits, of the said James Hendlen M'Leran, in the state of Georgia, and hath by virtue thereof possessed himself of the estate and effects of the said James Hendlen M'Leran, both real and personal, in the said state, and hath got into his possession and power the titles, evidences, and muniments of title, of the said James Hendlen M'Leran in and to the said real estate.

And your orator and oratrix further show unto your honors that the said real estate of which the said James Hendlen M'Leran died seized and possessed, or was entitled to in fee simple, consisted, as your orator and oratrix are informed, believe, and charge, of a tract of land situate on Argyle island, in the county of Chatham, and state of Georgia, containing about three hundred acres, bounded northwardly by land then or lately belonging to one Elizabeth Williamson, eastwardly by Savannah back river, and westwardly by Savannah middle river, and southwardly by land formerly belonging to William Mein, and also of a small island in the last named river, in the said county and state, containing thirty-five acres more or less, opposite the land first above mentioned, and land belonging to the late Richard M. Stiles; and also of eight hundred acres of pine land in the said county of Chatham, adjoining lands of John P. Williamson, and lands lately of the estate of General Jacob Read; and also of a lot of land in Munroe county, in said state, containing two hundred and two and a half acres, and the improvements on all the said lands; and which several tracts of land and the improvements thereon are, as your orator and oratrix are informed, believe, and charge, of great value. And your orator and oratrix are also informed and believe, and so they charge, that there are other lands situate in Georgia and elsewhere, not hereinbefore specified, of which the said James Hendlen M'Leran died seized and possessed, or to which he was entitled in fee simple, and which are now part and parcel of his estate, and the title deeds to which are in the power and custody or under the control of the said James Wallace.

And your orator and oratrix further show that the said personal estate of the said James Hendlen M'Leran, as your orator and oratrix are informed and believe, and so they charge, consisted of fifty or more negro slaves, worth

about fourteen thousand dollars or more, and also of money, rice, and other grain, furniture, and other valuable chattels, of about the value of five thousand five hundred dollars or more; a schedule whereof, or of a part whereof, is hereto annexed, marked and contained in Exhibit A, hereinbefore referred to. And your orator and oratrix are informed, and so they believe and charge, that the negroes and other personal property, moneys, and effects of the said James Hendlen M'Leran which came into the hands and possession of the said James Wallace, administrator as aforesaid, to be administered, were and are, together with the increase and profits thereof accrued since the death of the said James Hendlen M'Leran, greatly more than sufficient to pay and satisfy the funeral expenses and just debts of the said James Hendlen M'Leran.

And your orator and oratrix further show unto your honors and charge, that since the said negro slaves and lands have come into the possession, and under the management and control of the said James Wallace, as administrator, as aforesaid, the said negro slaves have been employed constantly by him in cultivating the said lands, or other lands of the said estate, or some part thereof, and that they have made one or more large and productive crops of rice, the proceeds of which have come into the hands of the said James Wallace, as administrator, as aforesaid, to be administered, and amount to a large sum of money, after paying the necessary expense of the making and selling the same; and they further show, that there is, and was at the time of the decease of the said James Hendlen M'Leran, on the said tract of land first abovementioned, a large rice toll-mill, part and parcel of the said estate, of great value, which has continued to be worked and used by the said James Wallace, from the time of the decease of the said James H. M'Leran, in beating rice and preparing the same for market, upon toll; and that the profits proceeds, and tolls whereof, have amounted to a large sum of money, and which have all been received by the said James Wallace.

And your orator and oratrix further show unto your honours, that the said intestate was not indebted, at the time of his death, in a sum exceeding fifteen thousand dollars, including principal as well as interest; and that the personal estate of the said intestate, which came into the hands of the said James Wallace, administrator as aforesaid, to be administered, together with the profits and proceeds of the same, were greatly more than sufficient, if they had been so applied, to have paid all the said debts and the interest, and to have relieved the said real estate from all incumbrances and liabilities whatsoever, to the payment of the same or of any part thereof, and ought, in the due course of administration, to have been applied, in the first place, to the extinguishment of the said debts; and your orator and oratrix further show unto your honours, that your oratrix, as the heir at law, and next of kin of the said intestate; and your orator, in behalf and right of his said wife, being entitled to all the lands of which the said James H. M'Leran died seized and possessed of, or was entitled to, in fee simple, with the improvements thereon and appertaining, and also to the said rice toll-mill, and the rents, issues, and profits of the said lands, and the tolls produced by the said mill, which have accrued since the death of the said James H. M'Leran, have, by themselves or their agents, applied to the said James Wallace, and have frequently requested him to come to a full and true account with your orator and oratrix, of the personal estate of the said James H. M'Leran, and of the profits and proceeds thereof, since the same came into his possession, or under his control, and of the debts due by the said estate, and to apply the said personal estate, and

the proceeds thereof, to the payment and extinguishment of the said debts, in due course of administration; and also, for a full and true account of the proceeds, rents, and issues, and profits of the said lands and other real estate, and the tolls and other emoluments of the said rice mill, which have accrued and come to his hands since the decease of the said James H. M'Leran, and to pay the same over to your orator and oratrix, as the heir at law and next of kin of the said intestate, and to deliver into the custody and power of your orator and oratrix, all the lands and other real estate of which the said James H. died seized and possessed, or was entitled in fee simple at the time of his death.

And your orators and oratrix further show unto your honors, that the said James H. M'Leran was not indebted, at the time of his death, in a sum exceeding sixteen thousand dollars; and they are informed that the principal debt for which the said James H., the intestate was responsible, was due on a bond and mortgage executed by the said James H. M'Leran in his lifetime, and which bear date on the first day of May, in the year of our Lord one thousand eight hundred and twenty-eight, which bond and mortgage were made and executed by him to one William J. Scott, who afterwards, as your orator and oratrix are informed, assigned the same to the marine and fire-insurance Bank of the state of Georgia, on which bond and mortgage the said James H., in his lifetime, made large payments, and on which, at the time of his decease, there was a balance due of only thirteen thousand dollars, or thereabouts; that in and by the said deed of mortgage so given by the said James H., in his lifetime, he did mortgage to the said William J. Scott, not only the tract of land situate on Argyle Island, first above described, containing three hundred acres, more or less, and the small island in Savannah river, above described, containing about thirty acres, but also fifty-five negro slaves which are therein named and specified, which negro slaves, so mortgaged, your orator and oratrix have been informed, and so they believe and charge, came into the hands and possession of the said James Wallace, as the administrator as aforesaid, and as part and parcel of the estate of the said James H. M'Leran, and still remain as such in his hands and possession, or under his control, and which, if sold, would have yielded a sum of money which, together with the other personal estate of the said James H. M'Leran, which came into the hands of the said James Wallace, as administrator as aforesaid, and the proceeds of the crops made by the said slaves after the decease of the said James H. M'Leran, would not only have been more than sufficient to pay and discharge the said debt so due on the said mortgage, with the interest and costs, but would also have paid and satisfied all the just debts of the said James H. M'Leran, and have left a considerable surplus, and which negroes and other personal estate, and the profits and proceeds thereof, ought, in the due of administration, to have been applied and appropriated, in the first instance, by the said James Wallace, administrator as aforesaid, to the payment and discharge of the said mortgage, and to the payment of the other debts of the said intestate, according to the law regulating the settlement of intestate's estates of force, in the state of Georgia, at that time, before the lands and other real estate of the said intestate, could be charged with and sold for the payment of the said mortgage debt, and the other debts and liabilities of the said intestate.

And your orator and oratrix further show unto your honours, that some time in the month of January, in the year of our Lord one thousand eight hundred and thirty-one, the said James Wallace, administrator as aforesaid, having

failed and neglected to apply the proceeds of the crops of the estate of the said intestate, and the other funds and moneys and personal estate of the said intestate which had come into his hands before that time, to be administered to the payment of the said debt so secured by mortgage as aforesaid, and with a view, as your orators charge, by the sale of the said real estate, to pay and extinguish the said debt so secured by mortgage as aforesaid, and all the other debts of the said intestate, and thereby to preserve for the benefit and advantage of John M'Learn, Mary M'Learn, George M'Kay, and Janet M'Kay his wife, and Mary M'Learn, above named, or for some of them, the personal estate of the said James H. M'Leran, and at their instance, or at the instance of one or more of them, and thereby intending to deprive your orator and oratrix of their just rights to the possession and enjoyment of the said real estate of the intestate, did by himself or his agent apply to and induce the said The Marine and Fire Insurance Bank of the state of Georgia, the assignees of the said bond and mortgage, to proceed to foreclose the same on the said real estate so included in the said mortgage only, which the said The Marine and Fire Insurance Bank accordingly did, by making the application therefor, in the usual manner, to the superior court of Chatham county, in the term of January, eighteen hundred and thirty-one, of the said court, at which term the said court granted the usual rule nisi in such case provided, and which in pursuance of the statute then of force in Georgia, was made returnable to January term of the said court, in the year one thousand eight hundred and thirty-two.

That previously to the term at which the said rule was made returnable as aforesaid, your orator and oratrix frequently applied to the said James Wallace, as administrator as aforesaid, and represented to him that, as the next of kin of the said James H. M'Leran, among the citizens of the United States, they were entitled by the laws of force in the state of Georgia, to all the real estate of the said intestate, situate in Georgia, in exclusion of all others except creditors, and that, according to the laws of the state, and in the due course of administration, the personal estate of the said intestate, together with the proceeds and profits thereof, ought in the first place to be subjected and applied to the payment of the debts of the intestate, and especially to the payment of the debt so due on the said bond and mortgage, and requested that the same might so be applied and appropriated to prevent the sale of the said real estate. That your orator and oratrix finding that these reasonable requests were wholly disregarded by the said James Wallace, your orator and oratrix afterwards, to wit, on the tenth day of November, in the year eighteen hundred and thirty-one, and before the term of the said superior court at which the said rule nisi was made returnable, filed their bill of complaint in the said superior court against the said James Wallace, as administrator as aforesaid, and the said The Marine and Fire Insurance Bank of the state of Georgia, wherein and whereby your orator and oratrix among other things prayed the said court to enjoin the said The Marine and Insurance Bank of the state of Georgia, its agents and attorneys, from proceeding further to foreclose the said mortgage on the said lands and real estate or to sell the same, until the personal estate of the said intestate, and especially the fifty-five negro slaves, named and included in the same mortgage, were in the first instance subjected to and applied to the extinguishment of the said debt and the interest due thereon and costs, copies of which bill and of the subpœna which issued thereon were, according to the rules and practice of the said court, duly served on the said James Wallace and the said The Marine and

Fire Insurance Bank; and that afterwards, at the term of January, eighteen hundred and thirty-two, of the said superior court, and before the granting of the rule absolute for the foreclosure of the said mortgage upon the said real estate, your orator and oratrix applied to the said court for the said injunction upon the usual terms in such cases, which application the said court upon consideration refused, and afterwards at the same term granted the rule absolute for the foreclosure of the equity of redemption of the representatives of the said intestate in and to the real estate above specified, and which was included in the said mortgage. That afterwards the said The Marine and Fire Insurance Bank caused the said three hundred acres of land on Argyle Island, and the small island above named, to be levied on by the sheriff of Chatham county, in the said state, to satisfy the said debt so due to the said bank as aforesaid, and the said mortgage so made to secure the same; which levy was accordingly made, and the said lands were, on the first Tuesday in May in the present year, put up at sheriff's sales in the said county of Chatham, to satisfy the said debt and mortgage: and Henry M'Alpin and Norman Wallace, as your orator and oratrix are informed, became the purchasers thereof, for the sum of twenty thousand dollars money of the state of Georgia. That your orator and oratrix are informed, and so they charge, that the said Norman Wallace and Henry M'Alpin, in making the said purchase, were acting therein merely as the agents and for the benefit and advantage of the said John M'Learn, Mary M'Learn, George M'Kay and wife, and Mary M'Learn, the elder, above named, or for some one or more of them, and that the said lands were actually purchased for the benefit and use of the *said* John M'Learn and the others above named, or of some one or more of them; and not for the use and benefit of the said Norman Wallace and Henry M'Alpin, or either of them. And your orator and oratrix further allege and charge, that the said lands so sold as aforesaid, were actually worth, at the time of such sale, the sum of thirty thousand dollars, and were sold for a sum of money actually far below their value; and they are also informed and so they charge, that at the time the said lands were sold as aforesaid, there was on the same a growing crop of Rice, which had been planted by the negroe slaves belonging to the estate of the said intestate; and that after the sale of the said lands as aforesaid, the said James Wallace, administrator as aforesaid, either hired or pretended to hire the said negro slaves to the aforesaid purchasers of the said lands, for the purpose of making the said crop of rice, so planted and growing on the said lands, and that the said crop of rice has actually been made on the said lands, and has proved very productive, and is worth a large sum of money. And your orator and oratrix further show unto your honours that, they being the next of kin of the said intestate, in the manner hereinbefore set forth, were by the law entitled to receive into their possession the whole real estate of the said intestate, and were also entitled to the rents, issues and profits thereof, and the tolls of the said toll-mill, from the time of the decease of the said intestate until the time of which the said real estate should be delivered into their possession. And being so entitled as aforesaid, they have applied to the said James Wallace, administrator as aforesaid, to render to them a just and true account of the said intestate's estate, with all his actings and doings therein, from the time the same came into his hands to be administered; and to deliver to them all the title deeds and other evidences of title to such portions of the said real estate of the said intestate as still remain unsold, as have come into his possession, or under his control, and also the possession of such parts of the said real estate; and to pay and allow

unto your orator and oratrix a reasonable annual rent for the use and occupation of the lands which were so sold as aforesaid, and for the use of the toll-mill aforesaid, from the time of the decease of the said intestate to the time of the sale as aforesaid; and to account with and to pay to your orator and oratrix out of the personal estate, or out of other moneys or funds which have come to his hands to be administered as aforesaid, the said sum of thirty thousand dollars, being the estimated value of the said lands so sold as aforesaid, and the said toll-mill, so permitted and allowed to be sold as aforesaid, or such other or less sum as they were reasonably worth at the time of such sale, together with the lawful interest thereon, from the day of such sale as aforesaid. And your orator and oratrix did at the time they made such their reasonable requests, and both before and after the said sale of the said lands, offer to the said James Wallace, administrator as aforesaid, that if it should appear and be found that the personal estate of the said intestate, together with the nett proceeds of the crops, and the other profits and issues which had come into his hands to be administered, were insufficient upon such accounting to pay all the just debts of the said intestate, with the interest which had accrued thereon, that they were ready and willing, after the said personal estate and other assets as aforesaid, were exhausted in the payment of the said debts and interest, to pay any balance thereof which might be found to remain, and to indemnify the said James Wallace, and save him harmless against any claim for such balances; and your orator and oratrix always have been and are now, ready and willing so to do.

And your orator and oratrix further charge and allege, as they have been informed and believe, that all the debts of the said intestate and interest due thereon, have been paid, and that all or the greater part of the negro slaves of which the said intestate died seized, together with their issue, remain in the hands and custody of the said James Wallace, to be administered, and that he hath also divers large sums of money, or other assets in his hands, still to be administered, and which with the proceeds of the sale of the said negro slaves, if sold by him, would be amply and sufficient and more than sufficient, to pay and satisfy all the above reasonable claims and demands of your orator and oratrix. And your orator and oratrix further show unto your honors, that in consequence of the refusal of the said superior court of Chatham county to grant the injunction which they applied for as above, stated, their said bill of complaint so filed as aforesaid hath been discontinued as well as the further proceedings thereon, as will appear by reference to the record thereof, now remaining in the said court.

And your orator and oratrix well hoped that the said James Wallace, administrator as aforesaid, would have complied with such their reasonable requests. But now so it is, may it please your honors, that the said James Wallace, combining and confederating with one John M'Learn, one Mary M'Learn, one George M'Kay and with Janet M'Kay his wife, and one Mary M'Learn, the elder, who are all aliens and subjects of the King of Great Britain, and with divers other persons now to your orator and oratrix unknown, but who when discovered they pray may be made parties hereto, with apt words to charge them, refused to account with your orator and oratrix, concerning the said estate, or to deliver to your orator and oratrix the title deeds or other evidences of title to such portions of the said real estate of the said intestate as remain unsold as aforesaid, or the possession of the said real estate; or to pay and allow to your orator and oratrix a reasonable annual rent for the use and occupation of the said lands so sold as aforesaid, by his

permission and allowance, from the time of the decease of the said intestate to the time of the sale thereof as aforesaid, or to account with or pay over to your orator and oratrix the amount of the reasonable value of the said lands, and the toll-mill thereon, which had been so sold with his allowance and permission as aforesaid, and lawful interest on such reasonable value from the time at which such sale was made, the said James Wallace and John M'Learn, Mary M'Learn, George M'Kay, Janet M'Kay and Mary M'Learn, the elder, pretending that although your oratrix, as hereinbefore set forth, is the next of kin of the said intestate, among the citizens of the United States, that yet they are not entitled to any portion of the said real estate of the said intestate; whereas, your orator and oratrix charge that they were entitled to the whole of the real estate of which the said intestate died seized and possessed, or was entitled to, at the time of his death, and are now entitled to the possession of that portion thereof which now remains unsold, and to a reasonable rent for such portion as have been sold as aforesaid, from the time of the decease of such intestate to the time when the same was sold as aforesaid, and to be paid in money an amount equal to a fair and reasonable value of such portions as have been sold as aforesaid, together with lawful interest of the state of Georgia thereon, from the time of such sale. And the said James Wallace and his confederates, at other times pretend that the said John M'Learn, Mary M'Learn, George M'Kay and Janet his wife, and Mary M'Learn the elder, are the next of kin of the said intestate, and that although they are aliens, they are as such next of kin entitled, not only to what may remain of the personal estate of the said intestate after payment of all his just debts, but also, that under the law of the state of Georgia, they are entitled to receive the proceeds in money of the said real estate, and that the said administrator is bound to sell the said real estate, and to pay the proceeds of such sale over to them; whereas, your orator and oratrix charge the contrary, and that your orator and oratrix are, by the laws of Georgia, heirs of the real estate of the said intestate, and were at the time of his death citizens of the United States, and, by the laws of Georgia capable of inheriting the real estate of the said intestate, and are now entitled to the same as next of kin among the citizens of the United States of the said intestate.

And the said James Wallace and his confederates, at other times pretend, that as the said lands so sold as aforesaid were mortgaged by the said intestate, previously to his death, for the payment of the said debt, to the said William J. Scott, that the said lands were subject, in the first place and instance, to the payment of the said debt and the interest thereon, before any part of the personal estate could be made liable therefor: whereas your orator and oratrix charge the contrary; and that by the laws of Georgia, it was the duty of the said James Wallace, in the due course of his administration, in the first place to have applied the whole of the personal property of the intestate to the payment of the said debts, and the interest thereon, according to the legal priority of the said debts: at other times the said James Wallace and his said confederates pretend, that the personal estate of the said intestate, and the issues thereof, and the proceeds of the crops which came into his hands, to be administered, were insufficient of themselves to pay and discharge all the just debts of the said intestate, and the interest which had accrued thereon: whereas your orator and oratrix charge the contrary, and that the said personal estate, including the negro slaves, and the issues, profits, and crops, were, if they had been applied to the payment of the debts of the intestate, greatly more than sufficient to have paid all the just

debts of the intestate, including his funeral expenses, and expenses of his last sickness, and the interest accrued on his debts; all which actings and doings and pretences, of the said James Wallace and the said John M'Learn, Mary M'Learn, George M'Kay and Janet his wife, and Mary M'Learn, the elder, are contrary to equity and good conscience and tend to the manifest injury of your orator and oratrix in the premises.

In tender consideration whereof, and forasmuch as matters of this nature are properly and peculiarly cognizable in a court of equity; to the end therefore, that the said James Wallace, administrator, as aforesaid, may, on oath, true and perfect answer make to all and singular the matters hereinbefore set forth, as fully and particularly as if the same were here again repeated; and more especially, that the said James Wallace may, in manner aforesaid, set forth and declare, whether the said James Hendley M'Leran did not die intestate, and without issue, at and about the time above set forth? Whether the said James Hendlen M'Leran was not, at the time of his death, seized and possessed of a large real and personal estate, in fee simple, then situate in the state of Georgia; and whether Exhibit A, hereto annexed, is not a true schedule thereof, or of some part thereof; and whether a great portion of the negro slaves therein specified were not originally the property of his mother, Sarah M'Leran; whether the said James Hendlen M'Leran did not arrive at the age of twenty-one years previously to his decease, and what was his age at the time of his decease, and whether upon his decease your oratrix was not, exclusive of aliens, his sole next of kin; and whether your oratrix is not the sole surviving child of William Hendlen, late of the state of South Carolina; and whether the said William did not depart this life previously to the decease of the said James Hendlen M'Leran, the intestate; and whether the said William Hendlen, the father of your oratrix, was not the brother of Benjamin Hendlen; and whether the said Benjamin Hendlen was not the father oft he said Sarah M'Leran; and whether the said Sarah M'Leran was not the mother of the said intestate; and whether the said James Hendlen M'Leran did not depart this life, leaving neither mother or father, wife or child, or children, or representatives of child or children, or brother or sister of the whole or half blood, or representatives of either, living at the time of his decease, or any other relative, a citizen of the United States, as near in kindred as your said oratrix; whether soon after the decease of the said James Hendlen M'Leran, he, the said James Wallace, did not take out letters of admininistration upon the estate and effects, goods and chattels, rights and credits of the said James Hendlen M'Leran, in the state of Georgia, from the proper court in said state; and whether he did not, in virtue of such letters of administration, possess himself of the estate and effects of the said James H. M'Leran, both real and personal, in the state of Georgia, and did not take into his custody and power the titles, evidences, and muniments of title of the said James H. M'Leran, in and to the said real estate, and of what the said real estate consisted; and whether the tract of land hereinbefore described, as situate on Argyle Island, was not parcel of the said real estate, and whether the same does not contain three hundred acres or thereabouts: and whether the small island and other lands hereinbefore described, were not also part and parcel of the said estate; and whether he, the said James, did not enter and take possession of all the said lands, as administrator as aforesaid, or of what part thereof; and whether there are not other lands or real estate in Georgia, to which the said James H. M'Leran was entitled at the time of his decease, and what and where

are those lands situate, and the quantity of acres; and whether the title deeds to all the said real estate, or to what part thereof, are not in his possession, or did not come into his possession as administrator as aforesaid, and where, and in whose custody they now are, or under whose control; and whether after the decease of the said James H. M'Leran, he, the said James Wallace, did not, as administrator as aforesaid, also receive into his custody and possession, all the personal estate of the said James H. M'Leran, and of what did the same consist; and whether Exhibit A, hereto annexed, is not a true schedule of the same, and of the value thereof at that time, as appraised by the appraisers appointed to appraise the same; and whether the said exhibit A is not a true copy of the said original appraisement, and what was the value of the said personal estate, including the negroes, and what the amount of debts due by the said James H. M'Leran at the time of his death; and whether the said personal estate was not more than sufficient, if the same had been sold at that time, to have paid and satisfied all the said debts and the interest thereon, and the funeral expenses of the said James H. M'Leran; and whether, since the said real and personal estate have come into his hands, the said negro slaves have not been constantly employed in cultivating the said lands, or some part thereof, for the use and benefit of the said estate; and whether they have not made thereon large and productive crops of rice and other produce, and what have been the amount of the net proceeds of such crop—and whether there was not at the time of the decease of the said intestate, a large and valuable toll-mill on the said lands, and whether the same is not still there, and what the amount of tolls received from the said mill since the decease of the said intestate to the time the lands were sold, as aforesaid; and whether your oratrix and orator did not by themselves, or their agent, long prior to the sale of the said lands as aforesaid, apply to him and represent to him, that they were the next of kin of the said intestate, among the citizens of the United States, and that as such, they claimed, and were entitled to the real estate of the said intestate, after the payment of all the just debts of the intestate; and whether they did not urge and require him to apply the moneys, crops, negroes and other personal estate of the said intestate, to the payment of his debts as aforesaid, in the first instance; and what was the amount due on the said bond and mortgage, to the said William J. Scott or his assignee, hereinbefore referred to, at the time of the death of the said intestate, and whether the whole amount due thereon has not since been duly paid and satisfied, and out of what fund; and whether in and by the same deed of mortgage, by which the said lands were mortgaged as aforesaid, there were not also fifty-five negro slaves, or thereabouts, also pledged and mortgaged by the said intestate to the said William J. Scott, and whether the same did not continue subject to the said mortgage and to the payment of the said debt, at the time of the decease of the said intestate; and whether the said negro slaves so mortgaged, or how many of them, including their issue, came into his hands to be administered; and whether he applied the proceeds of the crops made by the said negroes, and which came into his hands to the payment of the said debt, and if not, why he did not; and whether he applied the said negroes, or other personal estate which came to his hands to the payment of the said debt, and if he did not, why he did not; whether there was any debt due by the said intestate of equal or higher degree than the said bond and mortgage, and in what did such debt or debts consist, and to whom; and whether your orator and oratrix did not at the time hereinbe-

fore named, and in the court hereinbefore named, file their bill of complaint against him, as administrator, as aforesaid, and The Marine and Fire Insurance Bank of the state of Georgia, among other things for the purposes hereinbefore specified; and whether a copy of the said bill and the subpœna issued thereon was not duly served upon him; and whether the said court did not refuse the injunction as hereinbefore stated; and whether he the said James Wallace, by himself, his agent, or attorney did not advise, recommend to, or induce the said Marine and Fire Insurance Bank, its officers, managers, agent, or attorney, to proceed against the lands so mortgaged as aforesaid, for the satisfaction of their said debt, in order to relieve the negroes also pledged for the payment of the same from liability thereof, and at whose instance or for whose benefit or with what view this was done; and whether the said bank, its officers, agents, or attorney, did not, in consequence of such instances, select to proceed to subject the said real estate to the payment of their said debt, in preference to the said negroes included in the said mortgage; and whether, during all the said proceedings, and until the sale of the said lands, the said negroes were not within the county of Chatham aforesaid, and within reach of any process which may have issued against them on foreclosure of the said mortgage, and whether they could not at all times have been subjected to the payment of the said debt; and whether the said negro slaves are not still within the said county and under his control, or in his possession, as administrator, and if not, where are they, if not sold what is their value, if sold, what did they sell for; whether the said lands hereinbefore specified, as included in the said mortgage, were not sold at the time and place, and under the circumstances hereinbefore mentioned, and for what sum, and who became the purchasers, and whether the purchase-money has been paid by the said purchasers, and if paid, to whom; and whether paid in cash or in what manner, and who is now in possession of the said purchase-money, or of the securities given therefor; and whether, when the said lands were put up at sale, the terms were not announced to be cash or bankable money, payable immediately, or to that effect; and how have the proceeds of said sale been applied; and did the said purchasers, ers, purchase the same for their own use and benefit, or on their own risque, or was the said purchase made for the use and benefit of some other person, and for whom; and were not the said lands sold for a sum of money far below their actual value at said sale, and were they not, including the toll-mill sold therewith, worth much more, and what sum he believes they were really worth at the time of such sale, and now; and whether there was not rice actually planted on the said lands, or on some part of the same, and actually in a growing state at the time, and whether such rice was not planted and cultivated by the negroes so included in the said mortgage, or by the slaves of the intestate, and what quantity of acres were so planted and cultivated; and whether the said crop has not been cultivated and made by the same negroe slaves, and whether the same has not proved productive and abundant, and who is to receive the benefits and proceeds of said crop, and for whose use; and whether after the said sale of the said lands, the said negro slaves belonging to the said intestate's estate, were actually hired to the said Norman Wallace and Henry M'Alpin or not, and what was the number of negroes so hired, and what the amount of hire to be paid, and for whose use and benefit did the said Norman Wallace and Henry M'Alpin hire them; and whether all the debts of the said intestate have not been paid and satisfied, and what property, moneys, or funds, of every description remain in his hands to be administered? and that the said John M'Learn, Mary M'Learn,

George M'Kay, and Janet M'Kay his wife, and Mary M'Learn, the elder, may in like manner true and perfect answers make, and set forth what claim or right they pretend to have in or to the estate, real or personal, of the said James Hendlen M'Leran, the intestate; and whether the said Marine and Fire Insurance Bank, its officers, agents, or attorney, did not at their instance and request, or at the instance and request of some one or more of them, or at the instance and request of some agent or attorney of them, or some one of them, select or elect to proceed against the said lands so sold as aforesaid, for the satisfaction of its said debt; and whether this was not done or requested to be done with a view to relieve the negroes and other personal estate of the said intestate from liability for the payment and satisfaction thereof, and of the other debts of the said estate; and whether the said lands so sold as aforesaid, were not actually purchased by the said Norman Wallace and Henery M'Alpin, at their instance or at the instance of some one of them, or of some agent or attorney of them or of some one of them, and for their use, benefit, and advantage, or the use benefit and advantage of some one of them; and whether the same is not now actually held by the said Norman Wallace and Henry M'Alpin for their benefit, or for the benefit of them or some one or more of them? and the said James Wallace may be compelled to exhibit a full, true, and perfect acount of the estate of the said James Hendlen McLeran, and of all and singular the rents, issues, and profits thereof, showing what debts have been paid, and the nature of those debts, and out of what funds they were paid, and what may remain to be paid; what property, real and personal, is now in the hands, or under his control, as administrator, and what balance in cash remains in his hands. That your orator and oratrix may be declared entitled to so much of the real estate of the said James Hendlen M'Laren as remains unsold, and that the said James Wallace may be decreed to deliver to them such title deeds and other evidences of title to the said lands, as have come into his hands as administrator as aforesaid, and that the said John M'Learn, Mary M'Learn, George M'Kay, and Janet M'Kay his wife, and the said Mary M'Learn, the elder, may be decreed to have no interest in the said lands. And that the said James Wallace be compelled to account to your orator and oratrix for the amount of tolls received from the said toll-mill, or to pay to them a reasonable rent or hire for the said mill, from the time of the decease of the said intestate to the time the said mill was sold as aforesaid, with lawful interest thereon; and to account with your orator and oratrix for the amount sales of the said lands and toll-mill, and for the rents of the said lands from the time of the decease of the intestate to the time of the sale of the same; and that he be decreed to pay the said tolls and rents to your orator and oratrix, and the reasonable value of the lands and toll-mill so sold as aforesaid at the time of such sale, with lawful interest for the same from the day of such sale, which value shall be ascertained and fixed by the said decree, out of such personal estate, moneys, and other personal assets, as may remain to be administered in his hands of the said estate; and that if the moneys in his hands to be administered be insufficient for the payment of these several sums of money, so decreed to be paid to your orator and oratrix, that the negroes and other personal estate of the said intestate now remaining in the hands of the said James Wallace, or so much thereof as may be necessary therefor, be decreed to be sold, and the proceeds of such sale, or so much thereof as may be necessary, be applied to that purpose. And that your orator and oratrix may have such further relief as may be consistent with equity and good conscience. May it please honors to grant unto your orator and oratrix, the usual writ of subpœna

to be directed to the said James Wallace, John McLearn, Mary M'Learn, George McKay, and Janet McKay, his wife, and Mary McLearn, the elder, commanding them at a day and place, and under a certain pain therein to be named and inserted, to be and appear before your honors in the sixth circuit court of the United States in and for the district of Georgia, or at the rules thereof, to answer in the premises, and to abide by and perform the decree of your honors therein.

And your orator and oratrix will ever pray, &c.

RICH. W. HABERSHAM,
Sol'r for Complt.

(*Exhibit A.*)

INVENTORY AND APPRAISEMENT OF THE PROPERTY BELONGING TO THE ESTATE OF

Negroes belonging to the said Estate:

	AGE.	VALUE.		AGE.	VALUE.
Harry, driver	50	$600	Stephen,	25	500
Polly,	23	400	Binah,	23	400
Becky,	3	100	Jarvis,	1	50
Peggy,	1	50	Mary,	60	100
Rhina,	53	150	Charles,	20	425
Young Binah,	20	350	Suney,	24	400
Matilda,	14	300	Martha,	1	50
Old Charlotte,	47	250	Chloe,	34	375
Young Charlotte,	12	275	Maria,	35	375
Billy, miller and carpenter,	32	800	London,	21	450
Caty,	32	400	Jemima,	20	400
Martha,	9	200	Charity,	51	125
Old Charles,	70	50	Lenar,	71	00
Nancy,	45	200	Sampson,	8	200
Scotland,	46	350	Richard Cook,	51	200
Minty,	26	400	Young Nancy,	14	300
Rhina,	9	200	Hector,	9	250
William,	8 mos.	50	Friday,	24	500
Minda,	35	375	Binkey,	24	400
Dinah,	3	100	Hannah,	24	400
Toney, carpenter,	55	250	Paris,	1	50
Betsey,	26	400	Maria,	24	400
Ben, carpenter, diseased,	36	250	Alexander, cooper,	34	450
Abraham,	50	250			
Ned,	66	100			
Patty,	53	150			
Young Patty,	9	200			

Cash in hands of Jos. H. Burroughs,	102	95	220 acres rice land, cleared and under bank, $75 per acre,	16500	00
77 barrels good rice, in Savannah,	1181	95	80 acres uncleared swamp, at $35,	2800	00
13 barrels smull rice,	99	71	Island opposite P. Marchant's settlement, 35 acres,	750	00
1032 bushels of toll rice, in rough,	644	00	Rice Mill upon said estate,	7500	00
5335 do. crop rice, 1830, in rough;	3459	37	800 acres pine land in Chatham county, adjoining lands		
85 rice tiercies,	42	50			

of Mr. Williamson and estate of Reed,	- -	800	00
Lot of land, Munroe county, 202½ acres,	- -	500	00
1 sideboard,	- -	7	00
1 set of drawers,	- -	7	00
2 tables,	- - -	7	00
1 washstand,	- -	1	00
Dish covers,	- - -	1	00
Retort and pipe, to make and convey gas,	- -	100	00
1 canoe,	- - -	20	00
1 flat,	- - - -	100	00
1 old flat,	- - -	7	50
Carpenters' tools,	- -	15	00
2 blacksmith's bellows, 1 vice, 1 anvil,	- - -	16	00
5 head of cattle, at $6,	-	30	00
11 wheelbarrows, at $2.50,		27	50
Plantation tools,	- -	30	00
2 iron ploughs,	- -	24	00
3 trenching ditto,	- -	4	50
2 old harrows,	- -	1	00
2 2-legged trenching ploughs,		4	00
1 bag of feathers,	- -	7	50

We do certify upon oath, as far as was produced to us by the administrator, the above and foregoing contains a true appraisement of the goods and chattels, and credits of the estate of James H. McClaran, deceased, to the best of our judgment and understanding.

THOS. YOUNG,
HENRY M'ALPIN,
R. W. STITES.

I do certify that the above appraisers have been sworn to the performance of their duty as appraisers.

Sworn to before me, this 23d Feb'y, 1831.

HENRY J. VALLEAU, J. P.

GEORGIA, *Chatham county.*

I, Robert W. Pooler, clerk of the court of ordinary of Chatham county, state aforesaid, do hereby certify, that the foregoing sheets contain a true copy of the last will and testament of Archibald McClellan, late of said county, deceased, and also a true copy of the inventory and appraisement of the lands, goods, chattels, effects, credits, and demands of the estate of James H. McClaran, late of said county, deceased, as the same appear of record and of file in said office.

In testimony whereof, I have hereunto set my hand and seal of office, this tenth day of March, in the year of our Lord eighteen hundred and thirty-one.

[L. S.] ROBERT W. POOLER, *Clerk.*

Filed 1st Oct., 1832; G. GLEN, Clk.

Service acknowledged of subpœna to answer for defendants, except J. Wallace. 29th Sept. 1832.

BERRIEN & CUYLER, *for Defts.*

(Subpœna to answer bill of A. M'Clellan and wife, complts.)

UNITED STATES OF AMERICA, *ss.*

In the Sixth Circuit Court, District of Georgia.

[L. S.] GEO. GLEN, Clk.

The President of the United States to James Wallace, administrator of James Hendley M'Learn, and to John M'Learn, Mary M'Leran, George M'Kay, and Janet M'Kay, his wife, and Mary M'Learn, the elder, greeting:

Subpœna to answer bill of Archibald M'Clellan and wife.

For certain causes offered before the sixth circuit court of the United States for the district of Georgia, in chancery, you are commanded and strictly enjoined that, laying all other matters aside, and notwithstanding any excuse, you personally appear at the rules of the sixth circuit court aforesaid, to be held at the office of the clerk of the said court at Savannah, in said district, on the first Monday

in October next, being the rule day of the said court for the said month, to answer to a bill of complaint exhibited against you in the said court, by Archibald M'Clellan and Mary M'Clellan, his wife, and to do further, and receive what the said court shall have considered in that behalf; and this you may in nowise omit, under the penalty of one thousand dollars each.

Witness, the honourable JOHN MARSHALL, Chief Justice of the United States, this twenty-ninth day of September, one thousand eight hundred and thirty-two.

RICHARD W. HAHERSHAM,
Sol'r for Complts.

Service acknowledged, 29th Sept., 1832.

W. W. GORDON,
Sol'r for Jas. Wallace, admr., and for the other Defts.
By BERRIEN & CUYLER, *for Defts.*

(Answer of James Wallace, admr., &c., to Bill of Archd. M'Clellan and wife.)

Between ARCHIBALD M'CLELLAN ET UX, Complainants, *and* JAMES WALLACE, admr., JAS. H. M'LERAN, dec'd, ET AL., Defts. } In EQUITY.

Answer of Jas. Wallace to bill of A. M'Clellan & wife.

The answer of James Wallace, administrator of all and singular the goods and chattels, rights, credits and demands, lands and tenements, which were of James H. M'Leran, deceased.

This defendant now, and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, uncertainties, insufficiencies, and other imperfections in the said complainant's said bill of complaint contained for answer thereto, or unto, so much thereof as this defendant is advised is material or necessary for him to make answer unto, answereth and saith, that he admits that James H. M'Leran, late of said county, deceased, was at his death seized and possessed of the lands, tenements and negroes, and personal estate enumerated and designated in the inventory of his estate, of which a copy is annexed to the said original bill of complaint. This defendant admits that he took on himself the burthen of the administration of said estate, and possessed himself of all and singular the said estate. This defendant admits that he worked the said estate for the benefit of said estate until the said plantation on Argyle Island, and the said Small Island, including the said toll mill, were sold under foreclosure of mortgage, as is hereinafter stated; and this defendant annexes hereto, (marked Exhibit A,) a statement of the profits and expenditures of the said estate. This defendant further answering, saith, that the said intestate, at the time of his death, was indebted to the Marine and Fire Insurance Bank of the State of Georgia, on bond, in the sum of fourteen thousand three hundred and fifty dollars, besides interest, for the securing which the said plantation on Argyle Island and Small Island, and the said negroes, were mortgaged. That after the death of the intestate, the next of kin, and as this defendant supposed, the heirs at law of the said intestate, namely, John M'Learn, Mary M'Learn, George M'Kay, and Janet his wife, and Mary M'Learn, who are all aliens, deputed the said John M'Learn to come to this country and to represent their interests in the estate of the said intestate; and whilst here this defendant consulted and advised with the said John M'Learn, in the management and administration of said estate. That soon after the death of the said intestate, an instalment on the said debt to the said bank being due, the said bank commenced to foreclose the said mortgage on the said plantation. That this proceeding of the bank was had at the instance of this defendant, who believed it

more for the interest of said estate, that the said bank should proceed against the land than against the negroes. That the said bank exacted payment of the amount due, and would not extend further indulgence. That this defendant had not the means of making such payment, and well knew that if the bank proceeded to enforce said mortgage on the negroes of the estate, it would destroy the planting interest of said estate, at once depreciate in value greatly the said plantation, and leave it in the hands of this defendant with but little prospect of selling it to advantage. That the proceeding against the land gave to this defendant a whole year's indulgence, and enabled him to make ultimately a very advantageous sale of the negroes. And this defendant most expressly denies that at the time when this proceeding was begun he had any knowledge or intimation that there were any citizens heirs of the intestate, or any claiming to be such. This defendant further answering, saith, that the said mortgage was, according to law, foreclosed in the superior court of Chatham county, in the term of January, 1832. That prior to the final foreclosure of said mortgage, the said complainants filed a bill in the said court against the said bank, and this defendant, to enjoin the foreclosure of said mortgage on the said land; and the said court, on the rule to show cause why an injunction should not issue, refused such injunction on the ground that the said bank had its option to look to either fund for its payment—all of which appears, by reference to the records of said court, of which an exemplification is hereto annexed, marked Exhibit B, to which this defendant would refer as a part of this his answer. That this defendant, after the rule absolute for foreclosure, being desirous to give no advantage to either the claims of the complainants or the rights of the alien heirs, and so to administer said estate as best to subserve the interests of those entitled, addressed to the said bank a request that it would defer a sale of the said plantation under foreclosure of said mortgage until the crop then growing was made, when, if it were insufficient to pay the said debt, a sale of both land and negroes might be made to the most advantage. That the said bank refused such request, or to give any further indulgence, assigning as a reason for its refusal, that by proceeding against the land instead of the negroes, it had already been postponed the payment of its debt for a year; and accordingly, under the said foreclosure, sold the said plantation on Argyle Island, including the toll mill and the said small island; and after the payment from the proceeds thereof, the sum of fourteen thousand four hundred and eighty dollars and fifty cents, the amount then due on said mortgage, the balance was paid over to this defendant, to be administered. That the gross sales thereof was twenty thousand dollars. That after the sale of said plantation, which was made according to law, this defendant no longer being able to work the said negroes on lands of the estate, by leave of the court of ordinary of Chatham county, hired out the negroes for the remainder of the year. And this defendant annexes hereto, marked Exhibit C, a copy of his contract for the hire of said negroes, and of the authority so to do given to him by the said court of ordinary. That for the purpose of closing the affairs of the said estate, this defendant, according to the course prescribed by the laws of Georgia for the sale of intestates' estates, on the first day of January, eighteen hundred and thirty, then sold the negro slaves of said estate, fifty in number, for the sum of fifteen thousand dollars, for one third cash, one third in one year, and one third in two years, with interest at the rate of seven per centum per annum, secured by a mortgage on said negroes, which cash payment this defendant has ready to pay to the order of this court; and the bonds and mortgages for the two instalments are also in this defendant's possession, ready to be disposed of as this court shall direct.

This defendant annexes hereto, marked Exhibit D, to which he would refer

as a part of this his answer, a full account of all his receipts and disbursements for the said estate, which shows a total balance in his hands of the sum of twenty-one thousand two hundred and ninety-eight dollars forty-eight cents, including Charles J. Manigault's two bonds, for five thousand dollars each. This defendant further answering, saith, that the tract of pine land in Chatham county, and the tract of land in Munroe county of said estate, have not been sold or administered, and remain subject to the disposition of this court. This defendant does not know, and does not admit or deny that a great portion of the estate of the intestate was derived from his mother, but he has always understood and believed that the father was a saving and industrious man, and made the estate which he left to his son, the intestate, by his own labor and exertions. This defendant well knows that the plantation on Argyle Island and the small island were purchased by the father of the intestate, and that the debt aforesaid to the Marine Bank had its origin in the purchase of the said plantation, by the father of the intestate, and was assumed by the intestate after the death of his father. This defendant does not know whether the said complainants are or not the next of kin of the said intestate, or whether they are in any respect or degree related to him, and humbly prays that the said complainants may be held to strict proof of their relation to him, and of their interest in his said estate. This defendant admits that he knows of no heirs or next of kin of the intestate who are citizens of the United States, unless the complainants shall prove themselves so to be. This defendant denies that the said intestate had any other lands in the State of Georgia, at the time of his death, than those enumerated and described in the inventory and appraisement aforesaid, and the defendant alleges and charges that the said inventory and appraisement is a full and complete return of every thing of said estate which came to his hands to be administered. This defendant admits that the said plantation and negroes were productive and profitable whilst under his charge, except in the year 1831, when the crop was much injured and almost destroyed by a freshet; and this defendant refers to Exhibit D, hereto annexed, as a true return of all receipts by him, for said estate, from every source. That the rice received at the said mill for toll was not placed in any separate account, but was sent to market with the crop rice, and the profits of said mill are fully accounted for in the returns of sales made of rice by this defendant, and included in the account of which Exhibit D. is a copy. This defendant denies that he could, from the profits of the said estate, have paid the debts due by the intestate within the time he has had the management of said estate, and alleges that the loss of the crop of 1831, as aforesaid, rendered the estate wholly unable to meet, from its profits, the debts due. This defendant has included in the account of which Exhibit D is a copy, a statement of payments made by him, as well for the debts due by the intestate as for the current expenses of said estate. This defendant further answering, admits that the principal debt due by the estate was that due on bond and mortgage to the said bank, which was contracted in the manner stated in the said bill of complaint. This defendant denies that he could have paid said debt from the profits of said estate; and this defendant saith that the said bank, having a lien on both the plantation and negroes, had a right to look to either fund for its payment, and that this defendant could not have obliged the said bank first to resort to the one or other. This defendant admits that it was at his instance that the said bank did first resort to the land, but this defendant alleges and declares that his object in getting the bank to resort to the said land first was to obtain time, in the hope of at least reducing the debt from the crops, which hope was frustrated by the freshet of 1831. And for the reasons before assigned, and that, when he was so desirous that the land should be first resorted to, he did not know of any conflicting claims to

said estate. This defendant denies that it was his duty to have sold the negroes for the payment of said debts, and thus to have left the lands comparatively valueless on his hands, until the complainants had established their claims as heirs. This defendant does not know, nor does he admit that the negroes mortgaged were first liable, or that they should have been made to pay the said debt in exoneration of the land; but he, this defendant, saith that both lands and negroes have been sold for their full value, that the proceeds of the sale of each can be easily traced in the account of which Exhibit D is a copy, and that the application of the proper fund for the payment of said debts can be made by this court, as between the conflicting claims of the alien and citizen heirs.

This defendant denies that he has, in any act of his administration of said estate, given or attempted to give any advantage to either of the claimant heirs, and insists that the sale of the land under foreclosure of mortgage was an act that he could not prevent; that a reference to the state of his accounts as such administrator, will show that he had at no time the means in his hands to have paid the said debt. This defendant further answering, says, that the said plantation on Argyle Island and said small island were sold by the sheriff of Chatham county in the manner prescribed by law, and he believes sold for its full value; but that, whether sold for its value or not, it was a sale under judicial process, with which this defendant could not interfere, and for which he ought not to be made responsible. That after the sale of the said plantation as aforesaid, this defendant did hire the negroes of said estate to the purchasers thereof, and has accounted for the hire as aforesaid. This defendant knows nothing of the views of the said Norman Wallace and Henry McAlpin in making the purchase of the said plantation, and conceives he has nothing to do with those views. That the sale was open and public, and the complainants and all the world had full opportunity to purchase. That the crop made on the said plantation after the sale enured to the benefit of the said Norman Wallace and Henry McAlpin, the purchasers of said plantation. This defendant denies that the complainants were entitled to take into their possession the said lands of the said estate, or to receive the profits thereof, until the debts thereof were paid, and the estate of the intestate fully administered, and the rights of the complainants, as heirs at law, fully established. And this defendant denies the combination and collusion charged to him by the complainants, and alleges that, in all his acts as administrator, he has had alone in view the interest of said estate; and this defendant humbly submits to this court that he has honestly, and to the best of his ability managed and administered said estate; and that if any errors have been committed by him, they have been owing to his ignorance of conflicting claims in the first instance. And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without there is any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, avoided, traversed or denied, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and hereby prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

W. W. GORDON,
Solr. for J. Wallace.

You, James Wallace, being sworn, say that the facts stated in the above answer, so far as they are dependent on your own knowledge, are true: and so far as derived from the information of others, you believe them to be true.

J. WALLACE.

Filed at Rules, 6th May, 1833.

GEO. GLEN, Clk.

Sworn to before me, this 2d of May, 1833.

JNO. CUMMING, J. J. C. C. C.

Bill of Interpleader by J. Wallace, Administrator.

UNITED STATES.

To the Honorable the Justices of the Sixth Circuit Court of the United States for the District of Georgia, having jurisdiction in Equity.

JAMES WALLACE, admr., JAMES HENDLEY M'LERAN, dec'd, Complainant,
and
JOHN M'LEARN, MARY M'LEARN, GEORGE M'KAY and JANET his wife, MARY M'LEARN, the elder, ARCHIBALD M'CLELLAN & MARY his wife, Defendants,
} In EQUITY:

Humbly complaining, showeth unto your honor, your orator, James Wallace, administrator of all and singular the goods and chattels, rights, credits and demands which were of James Hendley McLeran, late of Chatham county, district of Georgia aforesaid, deceased, that the said James Hendley McLeran, your orator's intestate, departed this life intestate, in the month of May, eighteen hundred and thirty, aged about years, without children, father, mother, brother or sister, having a considerable estate, real and personal, the whole of which and its appraised value is comprised in the schedule of inventory and appraisement, of which a copy is hereto annexed, marked Exhibit A, to which your orator would refer as a part of this his bill of complaint.

That your orator administered on his estate, and possessed himself thereof; and finding the said estate heavily indebted on mortgage, which was then vested in the Marine and Fire Insurance Bank of the State of Georgia, which mortgage was a lien on all the negroes of said estate and the rice plantation, your orator, fearing that the said bank would take the most summary course to collect its debt, by foreclosing the said mortgage on the negroes, and thereby break up the said plantation, and being ignorant that there were any persons citizens of the United States who claimed to be of the blood and the heirs of the said intestate, applied to the said bank and requested it to foreclose its mortgage, first on the real property therein embraced, by which course your orator not only expected to obtain an extension of time for the payment of said debt, within which the same might be reduced by the profits of said estate, but also he believed that, if eventually obliged to sell the said estate for the payment of its debts, he would be able to sell the negroes without the land more advantageously than if the negroes were first sold, and the lands afterwards. That the said bank acceded to this request, and instituted the necessary proceeding for the foreclosure of said mortgage on the said land, in the superior court of Chatham county. That at the time when this request was made and acted on as aforesaid, your orator knew of no citizen of the United States who was or claimed to be interested in, or entitled to the estate of the intestate. But one John M'Learn, Mary M'Learn, George McKay, and Janet his wife, and Mary M'Learn, the elder, all aliens, and residing in the kingdom of Great Britain, claimed to be the next of kin and heirs at law of the said intestate, and under the belief that they were really and truly the heirs at law of the intestate, your orator conceived that it was of no importance to those entitled to the estate whether the payment of the debts thereof was thrown on either the real or personal estate, except in so far as to subject

that first which would be most depreciated by a separation; and your orator being ignorant of any conflicting claims which would make it a matter of moment whether the real or personal were first subjected to the payment of the debts, adopted the course aforesaid, which he deemed to be most for the advantage of the estate. That pending the said proceeding for foreclosure, the defendant, Archibald M'Clellan and Mary his wife, who are citizens of South Carolina, in right of the said Mary, apprised your orator that the said Mary was the next of kin on the mother's side of the said intestate; that she and her said husband were citizens of the United States, and as such nearest of kin who were citizens of the United States claimed to be entitled to the whole real estate of the intestate, and further insisted that the personal estate of the said intestate should be applied in payment of the debts of said estate, in exoneration of the real estate. That on such information being received by your orator, he came notice to the said Archibald and Mary his wife, that both the rice plantation and the negroes were included in the mortgage, and were equally liable to the payment thereof. That the said bank had the right to either for its payment, and that your orator could not control the said bank in its course. That the said Archibald and Mary his wife thereupon filed a bill in the said superior court of Chatham county, against your orator and the said bank, to enjoin the said bank from the foreclosure of its mortgage on the land, and to compel it to resort first to the negroes of said estate, which bill, however, resulted in the refusal of said court to enjoin the said bank; and the said bank, in the term of January, eighteen hundred and thirty-two, of said court, obtained a rule absolute for the foreclosure of said mortgage on the land. That your orator, sincerely desirous to give no advantage to either set of the claimant heirs, and to make sale of both lands and negroes together, which he believed would be most for the advantage of said estate, addressed a request to the said bank to postpone a sale of the said rice plantation under its judgment of foreclosure, until the crop then growing thereon were made, and that then negroes and plantation could be sold together. That the said bank refused to postpone the sale; and in the month of May, 1832, the said rice plantation on Argyle Island, including the toll mill and the small island in the said mortgage, were sold by the sheriff of Chatham county, according to law, under the judgment of foreclosure aforesaid. That thereupon your orator, being unable longer to work said negroes on lands of said estate, with the permission of the justices of the inferior court of Chatham county, sitting for ordinary purposes, hired the negroes of said estate for the remainder of the year to the individuals who had purchased the said plantation. That subsequently, in the month of January, eighteen hundred and thirty-three, your orator, by due course of law, sold the negroes of said estate, and for the purpose of effecting an advantageous sale, required the payment but of one-third of the purchase in cash, and the remainder in one and two years, with interest at seven per cent., secured by a mortgage on the said negroes. Your orator annexes hereto an account of all his transactions as administrator of said estate, as Exhibit B, to which he would refer as a part of this his bill, thereby showing all receipts by him from every source, all payments made by him for debts of the intestate, or the current expenses of the estate, what property of said estate remains in his hands unadministered, and the amount of money which is in his hands of the said estate, and showing also the product of each part of the estate sold, and the application of the proceeds; which unadministered property, and which amount of money are to be paid and delivered by your orator, to the person or persons entitled to receive the same. And your orator saith, that he hath always been ready and willing, and now is ready and willing, and he hereby offers to deliver the said unadministered property, and to pay said sum of money to such person or persons as

this honorable court shall please to direct; and your orator would have delivered the said unadministered property, and paid over the said moneys, had there been any persons or person to whom he could have safely delivered the one or paid the other. But now, so it is, may it please your honor, that the said John M'Learn, Mary M'Learn, George M'Kay, and Janet his wife, Mary M'Learn, the elder, and the said Archibald M'Clellan, and Mary his wife, combining and confederating together, and contriving now to injure and oppress your orator in the premises, severally set up claims to the said moneys in the hands of your orator, as administrator as aforesaid, and severally insist that they are the heirs at law of the said intestate, and entitled to have the same; and the said Archibald M'Clellan and Mary his wife, on their part, insist that the said Mary is the nearest of kin of the said intestate, who is a citizen of the United States, and capable of inheriting the real estate of the said intestate, and that they had the right to require the application of the personal estate to the payment of the debts of the intestate in the first instance, and that the plantation and small island, a part of the real estate, having been applied to the payment of the said debts, they have the right to receive from the proceeds of the personal estate an amount equal to that taken from the proceeds of the real estate for this purpose. On the other hand, the said John M'Learn, Mary M'Learn, George M'Kay and Janet his wife, and Mary M'Learn, the elder, insist, that although aliens, they are nearer of kin to the intestate than the said Mary M'Clellan, and that they are entitled to the personal estate of the said intestate. That a part of the real estate being equally liable in said mortgage with the negroes of said estate, and the principal debt of said estate having been originally contracted in the purchase of said plantation, they have a right to require the application of the real estate to the payment of said debt, and that the mortgagee, having resorted to the said plantation and small island for payment. they have a right to receive the proceeds of the personalty of said estate, without encumbrance or reduction. And the said defendants, John M'Learn, Mary M'Learn, George M'Kay, and Janet his wife, and Mary M'Learn, the elder, have filed a bill on the equity side of this court, to enforce these claims, both which bills are not pending in this court, and tend to vex and harass your orator in the premises. All which actings, doings, and pretences of the said confederates are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises. In tender consideration whereof, and forasmuch as your orator is remediless in the premises, by the strict rules of the common law, and can only be relievable in a court of equity, where matters of this nature are properly cognizable and relievable, where your orator may compel the said claimants to interplead and settle, and adjust their rights and demands between themselves, so that your orator may deliver the unadministered estate, and pay over the said moneys now in his hands, with safety.

To the end, therefore, that the defendants may, upon their several and respective corporal oaths, full, true, direct and perfect answers make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and more especially that they severally answer and set forth whether there are any others of kin to the intestate, as near as they represent themselves to be, and that they may severally set forth and discover what right or title they and each of them claim, or have in or to the said estate, and how they and each of them derive and make out the same; and that they may set to which of them the said money and securities for money do of right belong; and that they, the said defendants, may interplead and settle and adjust their said demands among themselves, your orator being ready and willing, and hereby offering to deliver the unadministered part of said estate, and

the said money and securities for money to such of the said defendants to whom the same shall appear of right to belong, being indemnified; and that your orator may be at liberty to bring the same into this honorable court, which your orator doth hereby offer to do, for the benefit of such of the several parties who shall appear to be entitled thereto; and that the said several defendants, and each and every of them may be restrained by the injunction of this honorable court from all further proceedings in law or in equity against your orator, administrator as aforesaid, by reason of the premises, and for such further and other relief as to this court shall seem meet.

May it please your honors to grant unto your orator the usual writ of subpœna, to be directed to the said John M'Learn, Mary M'Learn, George M'Kay, and Janet his wife, and Mary M'Learn, the elder, Archibald M'Clellan, and Mary his wife, commanding them at a day and place, and under a certain pain therein to be inserted, to be and appear before your honors in the sixth circuit court of the United States in and for the district of Georgia, or at the rules thereof, to answer in the premises, and to abide by and perform the decree of your honors therein.

W. W. GORDON, *Sol'r for Complt.*

James Wallace, the above named plaintiff, maketh oath and saith, that he doth not in any respect collude with any or either of the defendants above named, touching the matters in question in this cause, nor is he in any manner indemnified by any or either of the defendants, nor doth he exhibit his bill at the request or with the knowledge of any or either of them, but merely of his own free will, and to avoid being sued or molested touching the matters contained in the said bill.

J. WALLACE.

Sworn to before me, this 2d of May, 1833.

JNO. CUMMING, J. J. C. C. C.

Service of subpœna acknowledged, 6th May, 1833.

BERRIEN & CUYLER,
Solr's for the Defendants in Scotland.
RICH. W. HABERSHAM,
Sol'r for Arch'd M'Clellan and wife.

Answer of John M'Learn et al. to Bill of James Wallace, Administrator.

UNITED STATES OF AMERICA.

In the Sixth Circuit Court for the United States for the District of Georgia.

Between JAMES WALLACE, administrator of JAMES H M'LEARN *and* ARCHIBALD M'CLELLAN and others, *Defendants,* } In EQUITY.

The answer of John M'Learn, Mary M'Learn, George M'Kay, and Janet M'Kay, his wife, and Mary M'Learn, to the bill of complaint of James Wallace, administrator, complainant.

These defendants, saving and reserving to themselves now and at all times hereafter all and all manner of advantage and benefit of exception to the manifold errors and uncertainties in the said bill of complaint contained, for answer thereto, or to so much thereof as they are advised it is material and necessary for them to answer unto, answering, say:

That these defendants admit that the said James Hendley M'Leran, otherwise M'Learn, late of the county of Chatham, in the State of Georgia, departed this life about the time stated in the said bill, intestate, without father, mother, brother, or sister, leaving such estate as the complainant hath set forth, and that the said complainant, in due form of law, administered on his estate; and these defendants further admit said estate was indebted to the said the Marine and Fire Insurance Bank of the State of Georgia, by bond and mortgage, and that such proceedings and acts were had and taken in reference to said mortgage as the said complainant hath set forth. And these defendants further answering, say, that they have been informed, and believe, that after the sale of the said rice plantation, the negro slaves belonging to said estate were first hired and then sold by the complainant, in such manner and for such prices as he hath declared.

And the said defendants say that they claim to be entitled to the said estate, in the hands of the said complainant, as next of kin to the said intestate, in exclusion of all other persons, and that they have filed their bill, which is now pending in this honorable court, against the said James Wallace, as administrator aforesaid, and the said Archibald M'Clellan and wife, for distribution and settlement thereof, in which bill they have fully set forth their claims, and to which they pray leave to refer as occasion may require.

And these defendants pray to be hence dismissed with their reasonable costs in this behalf sustained, &c.

BERRIEN & CUYLER,
Sol'rs for

You do swear that what is contained in your foregoing answer, so far as the same concerns your own act and deed, is true of your own knowledge; and that what relates to the act of any other person you believe to be true.

JOHN M'LEARN,
MARY M'LEARN,
GEO. M'KAY,
JANET M'LEARN, or M'KAY,
MARY M'LEARN.

Sworn to before me this twenty-first day of October, one thousand eight hundred and thirty-three years.

JAS. EWING,
Provost of the city of Glasgow.

CONSULATE OF THE UNITED STATES OF AMERICA, *Glasgow.*

I, Alexander Thompson, Consul of the United States of America for Glasgow and the dependencies thereof, do hereby certify, to all whom it may concern, that James Ewing, esquire, is lord provost and chief magistrate of this city, and that as such full faith and credit are due to his signature.

Given under my hand, official seal, in Glasgow aforesaid, this twenty-first day of October, in the year of our Lord one thousand eight hundred and thirty-three, and of the independence of the United States the fifty-eighth.

[L. S.] ALEX. THOMPSON.

Filed at rules, Monday, 3d March, 1834.

GEO. GLEN, *Clerk.*

Whereas James Hendley M'Leran, otherwise M'Learn, late of the county of Chatham, in the State of Georgia, in the United States of America, died intestate, seized and possessed of all that tract of land, being a rice plantation, situate and being on Argyle Island, in the county and State aforesaid, called Gowrie, with the appurtenances thereunto belonging, and sundry negro slaves and other personal property: And whereas the following named persons, parties to these presents, claim to be next of kin and heirs at law of the said James Hendley M'Leran, otherwise M'Learn, and entitled by law to his estate, to wit: John M'Learn, of the city of Glasgow, in Scotland, paternal uncle of the said intestate, Mary M'Learn, of Glasgow aforesaid, only surviving daughter of James M'Learn, deceased, paternal uncle of the said intestate, and first cousin to said intestate, Janet M'Learn, wife of George M'Kay, of Old Kilpatrick, in Scotland aforesaid, and Mary M'Learn, of Old Kilpatrick aforesaid, daughter of James M'Learn the elder, deceased, and paternal aunts, of the half blood, to said intestate. And whereas doubts exist, under the law of the State of Georgia, how the estate of the said James Hendley M'Leran, otherwise M'Learn, is to be divided between the said persons claiming as aforesaid, and whether the said paternal uncle and paternal aunts are entitled to a portion or portions thereof, with the first cousin of the intestate. And whereas the said John M'Learn, Mary M'Learn, of Glasgow, George M'Kay, and Janet his wife, and Mary M'Learn, of Old Kilpatrick, have come to an amicable adjustment of their respective claims, and have agreed to divide the said estate between them, in manner hereinafter mentioned. Now, therefore, this indenture witnesseth, that the said John M'Learn, Mary M'Learn, of Glasgow, George M'Kay, and Janet his wife, and Mary M'Learn, of Old Kilpatrick, have covenanted, promised, and agreed, and by these presents do covenant, promise, and agree, one with the other, and each of them with the rest, that all the estate of the said James Hendley M'Leran, otherwise M'Learn, of whatsoever nature or kind, after the payment of the debts of the said intestate, and the lawful charges of administration on the said estate, shall be divided between the said John M'Learn, Mary M'Learn, of Glasgow, Janet, wife of George M'Kay, and Mary M'Learn, of Old Kilpatrick, in manner following, that is to say: one third part thereof to the said John M'Learn, one third part thereof to the said Mary M'Learn of Glasgow, one sixth part thereof to the said Janet, wife of George M'Kay, and one sixth part thereof to the said Mary M'Learn, of Old Kilpatrick, and the irrespective heirs and assigns. And whereas it is necessary to appoint an attorney or attorneys, one or more, to transact the business of said estate, and to settle the same with James Wallace, of the said county of Chatham, in the State of Georgia, administrator of all and singular the goods and chattels, lands and tenements, rights and credits, which were of the said intestate, so far as respects the interests of the said John M'Learn, Mary M'Learn, of Glasgow, George M'Kay, and Janet his wife, and Mary M'Learn, of Old Kilpatrick, who cannot proceed to the State of Georgia aforesaid. Now therefore, know all men by these presents, that the said John M'Learn, Mary M'Learn, of Glasgow, George M'Kay, and Janet his wife, and Mary M'Learn, of Old Kilpatrick, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, Henry M'Alpin, esquire, and Norman Wallace, esquire, of Savannah, in the county of Chatham and State of Georgia aforesaid, conjointly, or either of them, their true and lawful attorneys or attorney, and the attorney or attorneys, or attorney of each and every of them, the said John M'Learn, Mary M'Learn, of Glasgow, George M'Kay, and Janet his wife, and Mary M'Learn, of Old Kilpatrick, for them and each of them, and in their and each of their names, place and stead, to and for the use and behoof of them respectively, to ask, demand,

sue for, recover and receive of and from the said James Wallace, administrator as aforesaid, all and every such property and estate, real and personal, and sums of money, as shall or may become or be due to them respectively, according to the above agreement, and to adjust, compound, and agree for their respective claims; and on receipt thereof, to make, sign, seal, and deliver all necessary releases, discharges, and acquittances therefor, and generally to do, transact, and perform all necessary acts and deeds in the premises as fully, to all intents and purposes, as if they, said constituents, were personally present, and an attorney or attorneys under them, the said Henry M'Alpin and Norman Wallace, or either of them, for the purposes aforesaid, to make and at their or his pleasure to revoke. In witness whereof, all and every the parties have hereto set their hands and seals this sixteenth day of August, in the year of our Lord one thousand eight hundred and thirty-one.

JOHN MACLEARN. [SEAL.]
MARY McLEARN. [SEAL.]
JANET MACLEARN. [SEAL.]
GEORGE McKAY. [SEAL.]
MARY McLEARN. [SEAL.]

Signed, sealed, and delivered in presence of

ROBERT MANN,
Notary Public and Writer in Glasgow.

Witness: A. R. HENDERSON, *Glasgow*, witness.

Robert Mann, of the city of Glasgow, writer and notary public, dwelling therein, maketh oath and saith *the* he, this deponent, together with Archibald Reid Henderson, of the said city of Glasgow, writer or attorney at law, did see John M'Learn, of the city of Glasgow, in Scotland, Mary M'Learn, of Glasgow aforesaid, Janet M'Learn, wife of George M'Kay, of Old Kilpatrick, in Scotland aforesaid, the said George M'Kay, and Mary M'Learn, of Old Kilpatrick aforesaid, parties to the agreement and letter of attorney hereto prefixed, sign, seal, and, as their own acts and deeds respectively in due form of law, deliver the said agreement and letter of attorney; and this deponent further saith, that the names John Maclearn, Mary M'Learn, Janet M'Learn, George M'Kay, and Mary M'Learn, set and subscribed to the said agreement and letter of attorney, are of the proper handwriting of the said John M'Learn, Mary M'Learn of Glasgow, Janet M'Learn, George M'Kay, and Mary M'Learn of Old Kilpatrick, respectively; and that the names Robert Mann, A. R. Henderson, subscribed as witnesses to the execution of the same, are of the respective handwriting of this deponent and the said Archibald Reid Henderson, and further this deponent saith not.

ROBERT MANN.

Sworn at the city of Glasgow aforesaid, this seventeenth day of August, in the year of our Lord one thousand eight hundred and thirty-one, before me, lord provost and chief magistrate of the said city of Glasgow.

ROBERT DALGLISH, *Provost.*

To all to whom these presents shall come, I, Robert Dalglish, esquire, lord provost and chief magistrate of the city of Glasgow, in Scotland, do hereby certify that on the day of the date hereof, personally came and appeared before me, Robert Mann, the deponent named in the foregoing affidavit, being a person

well known and worthy of good credit, and by solemn oath, which the said deponent then took before me, did solemnly and sincerely declare, testify, and depose to be true the several matters and things mentioned and contained in the said affidavit.

In faith and testimony whereof I, the said Robert Dalglish, esquire, have caused the seal of the said city of Glasgow to be hereunto put and affixed, this seventeenth day of August, in the year of our Lord one thousand eight hundred and thirty-one.

[L. S.] ROBERT DALGLISH.

I, David Walker, consul of the United States of America for Glasgow and the dependencies thereof, do hereby certify, to all whom it may concern, that Robert Dalglish, esq. is the lord provost and chief magistrate of this city, and that full faith and credit are due to his signature.

Given under my hand and official seal, in Glasgow aforesaid, this 18th day of August, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States the fifty-sixth.

[L. S.] DAVID WALKER.

Filed 30th July, 1834.

GEORGE GLEN, *Clerk.*

The Answer of A. M'Clellan and wife, of S. Carolina, to the Bill of Complaint of James Wallace, admr.

THE UNITED STATES OF AMERICA, } IN EQUITY.
Sixth Circuit—District of Georgia, }

Answer of A. M'Clellan and wife to bill of Jas. Wallace, administrator.

The answer of Archibald M'Clellan and Mary M'Clellan his wife, of St. Jame's Santee, in the State of South Carolina, who are impleaded with John M'Learn, Mary M'Learn, George M'Kay, Janet M'Kay and Mary M'Learn, the elder, to the bill of complaint of James Wallace, of Chatham county, in the State of Georgia, administrator of all and singular the goods and chattels, rights and credits which were of and belonging to James Henlen McLeran, deceased, at the time of his death.

These defendants, now and at all times hereafter, saving and reserving to themselves all and all manner of advantage and benefit of exception to the manifold errors, uncertainties, and insufficiencies in complainant's said bill of complaint contained, for answer nevertheless thereunto, or unto so much thereof as they are advised it is material for them to answer unto, answering, say that they believe it to be true, that James Henlen McLeran, called by the complainant James Hendley McLaren, died intestate, without children, father, mother, brother, or sister, as in the complainant's said bill mentioned; but of the exact time of his death these defendants are not informed—leaving a considerable estate, real and personal, but of the amount and particulars thereof they are ignorant. And these defendants further answering, say, that they have been informed that administration of the estate and effects of the said James Henlen McLeran was in due form committed to the said complainant, James Wallace. But as to the acts of the said administrator, and whether the account thereof set forth in the said bill of complaint be true, these defendants know nothing, and hope that he may be held to strict proof of the same.

These defendants further answering say, that heretofore, and before the said complainant exhibited his said bill of complaint in this honorable court, to wit,

on the sixth day of April, which was in the year of our Lord one thousand eight hundred and thirty-two, the same John M'Learn, Mary M'Learn, Geo. M'Kay, Janet M'Kay, and Mary M'Learn the elder, in the complainant's said bill named, did exhibit their bill in this honorable court against the now complainant, and also against these defendants, claiming both the real and personal estate of the said intestate, James Henlen McLeran, as nearest of kindred, and insisting that, although aliens, they are entitled to have the lands sold, and the proceeds paid to them. To which bill these defendants afterwards, to wit, on the twenty-eighth day of December, in the year of our Lord one thousand eight hundred and thirty-three, put in their answer, setting forth, fully and particularly, the relationship of this defendant Mary, to the said James Henlen McLeran, and insisting that the said Mary is entitled to the whole of the real estate of the said intestate, as heir at law; and that as the said real estate has been sold for the payment of the debts, these defendants are entitled to be reimbursed out of the personal estate for the amount so taken from the real estate.

And these defendants further answering say, that heretofore, and before the said complainant exhibited his said bill in this honorable court, to wit, on the first day of October, which was in the year of our Lord one thousand eight hundred and thirty-two, these defendants did exhibit their bill in this honorable court against the now complainant, and also against the same John M'Learn, Mary M'Learn, George M'Kay, Janet M'Kay, and Mary M'Learn, the elder, in the complainant's said bill named, for a settlement of the estate of the said James Henlen McLeran, which said bill charges that this defendant Mary is the heir of the said James Henlen M'Leran ex parte materna; that there are no heirs ex parte paterna; that she is entitled to the whole of the real estate; and that as it has been sold and applied to pay debts, she claims to stand as a creditor of the personalty for the amount paid out of the real estate; to which said last mentioned bill answers were put in, and the same is still depending in this honorable court, as by the said bills and answers, reference being thereunto had, will more fully appear. And these defendants crave leave to refer this honorable court more particularly to the said answer of these defendants to the bill of the said John M'Learn, Mary M'Learn, George M'Kay, Janet M'Kay, and Mary M'Learn the elder, as containing their answer to the several matters set forth in the complainant's said bill of complaint.

And these defendants submit that, as all the matters which the complainant seeks to put in issue by the present bill are already put in issue by the former bills above mentioned, and the said bills are still depending in this honorable court, and the said causes are yet undetermined, this present bill is needless; and these defendants therefore pray that the same may be dismissed. And these defendants deny all and all manner of combination and confederacy wherewith they stand charged in and by the said bill of complaint, without that, that any other matter or thing material or necessary for these dendants to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true. All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct and award; and pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

RICH'D W. HABERSHAM, *Solicitor.*

Personally appeared Archibald M'Clellan and Mary M'Clellan, who, being duly sworn, deposed that the matters in the foregoing answer contained, so far as the same depend on their own knowledge, are true; and so far as they are derived from the information of others, they believe them to be so.

ARCHIBALD M'CLELLAN,
MARY M'CLELLAN.

Sworn to before me, this eleventh day of October, A. D. eighteen hundred and thirty-three.

JOHN S. PALMER, Q. U. [L. S.]

Filed 28th Dec., 1833. GEO. GLEN, Clk.

Answer of Jno. M'Learn et al. to Bill of Complaint of Archibald M'Clellan and wife.

UNITED STATES OF AMERICA.

In the Sixth Circuit Court of the United States for the District of Georgia, in Equity.

Between ARCHIBALD M'CLELLAN and MARY M'CLELLAN, his wife, Complainants, *and* JAMES WALLACE, administrator of JAMES H. M'LERAN, and JOHN M'LEARN and others, Defendants. } BILL.

The answer of John M'Learn, Mary M'Learn, George M'Kay, and Janet M'Kay, his wife, and Mary M'Learn, to the bill of complaint of Archibald M'Clellan and Mary his wife.

These defendants, saving and reserving to themselves, now and at all times hereafter, all and all manner of advantage and benefit of exception to the manifold errors and uncertainties in the said bill of complaint contained, for answer thereto, or to so much thereof as they are advised it is material or necessary for them to answer unto, answering, say: That the said James Hendley McLeran, otherwise M'Learn, late of the county of Chatham, in the State of Georgia, departed this life sometime in the year of our Lord one thousand eight hundred and twenty-nine or thirty, seized and possessed of such real and personal estate as the said complainants have set forth; but these defendants do not know, and cannot admit that any of the slaves of which said James Hendley died possessed, were ever the property of his mother, Sarah McLeran; nor do these defendants know, or in any wise admit that Sarah M'Leran, the mother of said James Hendley M'Leran, was first cousin or other relative whatever, by blood, to the mother of the complainant Mary M'Clellan; and these defendants pray that the said Mary, the complainant, may be held to due proof of such consanguinity as in said bill is declared. And these defendants further answering, say, that it is true that the said James Hendley M'Leran died intestate, leaving at his death these defendants, his next of kin, in Scotland; but whether there was any relative whatever of the said James Hendley M'Leran, at his death, a citizen of the United States of America, these defendants do not know.

These defendants further answering, say, it is true that the said James Wallace, in due form of law, administered on the estate of the said intestate, and took possession of all the property, real and personal, which he left at his death; but these defendants do not know the value of said estate, or the value of the respective portions thereof; nor can these defendants answer as to the acts of the said administrator in reference thereto, since they have no knowledge of his transactions or accounts with or concerning the said estate. And these defendants further answering, say, that they do not know what the debts of the said intestate amounted to, but they have been informed and believe that the personal estate of the said intestate was not sufficient at the time of his death to discharge the same.

These defendants have been informed and believe that the principal debt which the said intestate owed at the time of his death, was a debt to the Marine and Fire Insurance Bank of the State of Georgia, assignee of William J. Scott, and

that this debt was in fact a debt contracted in whole or part by the late father of the intestate for the said rice plantation on Argyle Island, and which land the intestate derived from his father; and these defendants further answering, deny that they were ever in any manner privy to any application of the said James Wallace to the said bank to foreclose their mortgage on the land, with a view to defeat the claim of the said complainants; in truth, these defendants did not know, until after the bank commenced its proceedings, that there was any one in the United States claiming to be an heir of the intestate. And these defendants admit that the said bank did foreclose its mortgage upon the real estate, to wit, the land on Argyle ; and the same was sold under foreclosure, and, as they have been informed and believe, purchased by Norman Wallace and Henry M'Alpin; but these defendants deny that they requested the said Norman and Henry to purchase the same, and they deny that the same was purchased on the account of these defendants, or under their instructions, or with their knowledge at the time. And these defendants further answering, say, that the said bank had full right to sell the said land to satisfy their mortgage debt; that both at law and in equity the said land on Argyle was bound to pay said debt; that there was no obligation on the part of the said administrator to pay the debts from the personal effects of the estate, and that the fund now in the hands of the said administrator is, of right, due to these defendants, as next of kin to the said intestate. And these defendants further say, that they filed their bill in this honorable court against the said James Wallace, as administrator of the said James Hendley M'Leran and *and* the said complainants, for distribution and settlement of the said estate, in which bill these defendants, as complainants, have fully set forth their claims, and to which bill, now pending in this honorable court, these defendants pray to refer; and these defendants deny all and all manner of combination and confederacy wherewith they stand charged, without that there is any other matter or thing in the complainant's said bill of complaint contained material or effectual for these defendants to make answer unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall award; and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

BERRIEN & CUYLER,
Sol'rs for Def'ts.

You do swear that what is contained in the foregoing answer, so far as the same concerns your own act and deed, is true of your own knowledge; and that what relates to the act or deed of any other person you believe to be true.

JOHN MACLEARN,
MARY M'LEARN,
GEORGE M'KAY,
JANET MACLEARN, or MACKAY,
MARY M'LEARN.

Sworn to before me this twenty-first day of October, one thousand eight hundred and thirty-three years.

JAS. ERVING,
Provost of the city of Glasgow.

CONSULATE OF THE UNITED STATES OF AMERICA, *Glasgow.*

I, Alexander Thomson, Consul of the United States of America for Glasgow and the dependencies thereof, do hereby certify, to all whom it may con-

cern, that James Erving, esq., is lord provost and chief magistrate of this city, and that, as such, full faith and credit are due to his signature.

Given under my hand and official seal, in Glasgow aforesaid, this twenty-first day of October, in the year of our Lord one thousand eight hundred and thirty-three, and of the independence of the United States the fifty-eighth.

[L. S.] ALEX. THOMSON.

Filed at rules, Monday, 3d March, 1834.

G. GLEN, *Clerk.*

Order that commission issue to examine witnesses in South Carolina.

Between ARCHIBALD M'CLELLAN *et uxor*, Complainants, *and* JOHN M'LEARN *et al.*, Def'ts. } In EQUITY.

In Sixth Circuit Court United States, Georgia District, at February rules, 1834.

It is ordered that a commission for the examination of Thomas Skrine, Thomas Ford, Margaret Ford, and Robert Lester, witnesses residing in the State of South Carolina, on interrogatories filed by the complainants, do issue after the expiration of five days; and that the same be directed to John G. North, Eleazer Waterman, and Thomas L. Shaw, of the said State of South Carolina, as commissioners therein; and that, in the mean time, the defendants may join in the said commission, if they please.

RICHARD W. HABERSHAM,
Complainants' Solicitor.

Replication of A. M'Clellan and wife to answers of John M'Learn et al., def'ts.

Between ARCHIBALD M'CLELLAN and wife, Complainants, *and* JOHN M'LEARN and others, Def'ts. } In the Sixth Circuit Court, in Equity.

The replication of Archibald M'Clellan and Mary M'Clellan, his wife, complainants, to the answers of John M'Learn and others, defendants:

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants for replication thereunto saith, that they do and will aver, maintain, and prove their said bill to be true, certain, and insufficient in the law to be answered unto by the said defendants, and that the answers are very uncertain, evasive, and insufficient in the law to be replied unto by the repliants, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are ready to aver, and maintain, and prove as this honorable court shall direct; and humbly pray as in and by their said bill they have already prayed.

RICHARD W. HABERSHAM,
Complainants' Solicitor.

General replication to answers filed 25th April, 1834.

GEORGE GLEN, *Clerk.*

General replication of John M'Learn et al., complainants, to answers of J. Wallace et al., defendants.

Between John M'Learn *et al.*, Compl'ts, *and* James Wallace, administrator, *et al.* Defendants. } In Equity.

Sixth Circuit Court United States, district of Georgia.

The replication of John M'Learn and others, complainants, to the answers of James Wallace and others, defendants.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereto saith, that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants; and that the answers of the said defendants are insufficient in the law to be replied to by these repliants, without that there is any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are ready to aver, and maintain, and prove as this honorable court shall direct; and humbly pray as in and by their said bill they have already prayed.

BERRIEN & CUYLER,
For Complainants.

Filed 12th May, 1834. GEORGE GLEN, *Clerk.*

James Wallace, administrator of Jas. H. M'Leran, deceased, *vs.* Arch'd M'Clellan *et ux.*, and Jno. M'Learn *et al.*, Defendants. } In Equity.

The replication of James Wallace, administrator of James H. M'Leran, deceased, to the answers of Archibald M'Clellan and wife, John M'Learn and others, defendants.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants, for replication thereto saith, that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law, to be answered unto by the said defendants; and that the answers are very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, and maintain, and prove as this honorable court shall direct; and humbly prays as in and by his said bill he has already prayed.

W. W. GORDON,
Complainants' Solicitor.

Filed 12th May, 1834.

GEORGE GLEN, *Clerk.*

Rule setting cause for hearing.

In Sixth Circuit Court.

Between JOHN M'LEARN and others, Complainants,
and
ARCHIBALD M'CLELLAN and others, Defendants. } In Equity.

The defendants in the above cause having appeared and filed their answers, on motion of Richard W. Habersham, solicitor for Archibald M'Clellan and wife, defendants, ruled that the said cause be set down for plenary hearing at the next May term of the said sixth circuit court.

RICHARD W. HABERSHAM,
Solicitor for M'Clellan and wife, defendants.

Same.

Sixth Circuit Court, Georgia District.

Between ARCHIBALD M'CLELLAN and MARY M'CLELLAN, Complainants,
vs.
JAMES WALLACE, administrator, and others, Defendants. } In Equity.

The defendants having appeared and filed their answers in the above cause, it is ruled that the same be set down for a plenary hearing at the next term of this court in May.

RICHARD W. HABERSHAM,
Complainants' solicitor.

Exhibit D to J. Wallace's Answer.

Dr. Estate of James H. McLeran in account with J. Wallace, administrator.

1830.				
June 26		To am't. pd. Ketchum and Burrows, balance due them,	$667	46
24		C. H. Dasher - - -	100	00
July 6		E. Reed - - -	11	75
"		J. B. Herbert - - -	37	50
13		T. H. Purse - - -	57	46
14		A. Low & Co., expenses of interment,	104	40
Sept. 1		Jail fees of Friday - - -	3	21
1831.				
Jan. 12	1	H. M'Alpin - - -	273	44
	2	Do and J. Wallace, comm. as executors, A. M'Leran, for year 1828	560	00
25	3	O. Johnson & Co. - - -	3	91
	4	J. M'Innis - - -	22	87½
	5	E. Reed, for 1828 and 1830 -	169	86
	6	E. Reed - - -	28	40
18	8	J. D. Huguenin - - -	27	50
Mar. 2	9	George Oliver - - -	216	34
	10	Taxes - - -	30	69
3	11	J. Inglis & Co. - - -	32	15

6—65

Mar. 23	12	To am't. pd. self, for 306 barrels - -	$ 179 25
Apr. 6	14	Goddard - - -	450 00
May 2		Int. on debt to M. & F. Insurance Bank	1,068 00
5	16	J. S. Jones - - -	16 13
"	"	J. Anderson - - -	186 54
Jun. 19	17	W. W. Gordon - - -	100 00
19		Self for 64 casks - - -	56 00
16	20	N. Wallace - - -	47 20
21		George Newhall - - -	38 85
22		A. G. Oemler - - -	21 44
29	23	T. Purse - - -	21 19
Aug. 24	24	Palmer & Lee - - -	17 50
25		Self for 60 barrels - - -	45 00
28	26	O. Johnson & Co. - - -	17 15
Nov. 4	27	M. Kenney - - -	2 62½
5	28	Cox & Roberts - - -	70 00
12	29	J. B. Herbert & Co. - -	1 88
22	30	Mr. Pollard - - -	20 00
Dec. 27	31	Goddard for board of Oliver -	12 00
31	32	J. H. Burroughs - - -	15 54
1832.			
Jan. 4	1	Pollard - - -	287 50
	2	Hazard & Denslow - -	17 25
	3	Ensworth & Way - - -	1 50
	4	Campfield & Breed - - -	1 50
	5	A. B. & H. Weed - - -	5 25
Feb. 13	6	Mr. Sharp - - -	200 00
	7	Claghorn & Wood - - -	10 13
Mar. 6	7	T. Goddard - - -	133 33
7	8	T. Purse - - -	10 25
10	9	E. Reed - - -	28 00
	10	B. N. Douglass - - -	54 50
17	11	Taxes - - -	28 85
	12	150 barrels - - -	114 75
19	13	George Newhall - - -	66 85
26	15	N. Wallace - - -	30 29
Apr. 9	16	J. Anderson & Co. - - -	320 68
	17	H. Cassidey - - -	1 28
	18	A. A. Smets - - -	98 02
May 1	19	Cox & Roberts - - -	102 00
	20	Anson Parsons - - -	8 12½
	21	Hazard & Denslow - -	12 50
	22	T. Young, principal and interest of note,	1,156 13
June 29	23	Anson Parsons - - -	8 00
	24	Campfield & Breed - -	8 12½
	25	Cox & Roberts - -	9 52
	26	R. W. Pooler - - -	11 00
	27	W. W. Gordon - - -	50 00
Nov. 28	28	R. W. Pooler - - -	3 00
	29	Jail fees of Friday - - -	11 78
May 2	30	Bond and mortgage, interest and costs,	14,480 50
	31	R. W. Pooler - - -	5 00

1833.					
Jan.	32	To am't. pd. J. Rogers - - -			133 33
	33	J. Marchiron - - -			8 25
	34	N. Wallace - - -			35 08
Mar.	35	A. G. Oemler - - -			10 41
April	36	W. W. Gordon - - -			350 00
	37	J. B. Herbert & Co. - -			187 50
	7	J. M'Learn -	$ 20 00		
	13	Do -	50 00		
	15	Do -	1,000 00		
	14	Do -	146 66		
					1,216 66
		J. H. Burroughs omitted -	1 68		
		Do 6 casks returned	3 86		
		125 lbs. tobacco, at 8 cents -	10 00		
					15 54
		Comm. on $23,965 59, paid at 2½ per cent. - -	599 13		
		Comm. on 45,987 89, rec'd, at 2½ per cent. - -	1,124 69		
					1,723 82
		Ret'd for letters dismissory			9 00
		Balance in hand, exclusive of negro hire and articles of furniture, tools, &c., not sold - - -			20,298 48
					$45,987 89

Contra, Cr.

1830.				
June 30	By nett proceeds 111½ barrels rice -			$ 1,014 91
Sept. 30	do 35 do -			315 94
1831.				
Feb. 16	Do 7 do -			75 48
"	Do 21 do -			314 17
Mar. 4	Do 77 do -			1,150 77
"	Do 114 do -			1,708 30
July 9	Do 64 do -			864 49
Sept. 9	Do 60 do -			1,008 81
1832.				
Feb. 13	Sales of rice by J. H. Burroughs -			1,150 08
Mar. 27	Do do do -			554 93
"	Do do do -			922 53
May 2	Lands on Argyle and Small Island and toll mill			19,739 13
June 9	Sales of rice by J. H. Burroughs -			2,108 69
	Negroes of the estate -			15,000 00
	Amount received from Bank of Darien, interest on deposite, - - -			59 68
				$45,987 89

The balance on hand is invested as follows:

In the Branch Bank of Darien on deposite, at int. at 4 per cent.	$ 5,000 00
In the Marine and Fire Insurance Bank, at same interest,	5,000 00

C. J. Manigault's bond, payable 1st January, 1834, with interest at 7 per cent. from 1st January, 1833,	5,000 00
C. J. Manigault's bond, payable 1st January, 1835, with interest at 7 per cent. from 1st January, 1833,	5,000 00
Cash in hands of J. Wallace, administrator,	298 48
	$20,298 48
Besides some plantation tools, old flat, 4 cows, &c., of little value, to be sold immediately, hire of negroes from 2d May, 1832, to 1st January, 1833,	1,000 00
	$21,298 48

Exhibit A to Bill of J. Wallace.

Inventory and appraisement of the real and personal estate of James M'Leran, late of Chatham county, planter, deceased; taken by us at Gowrie plantation, on Savannah river, this 18th day of February, 1831, in conformity to a warrant of appraisement, to us directed, by Robert W. Pooler, clerk of the court of ordinary for Chatham county.

Fifty Negro Slaves, viz:

	AGE.	VALUE.		AGE.	VALUE.
Harry, (driver)	50	$600	Lusey,	24	400
Polly,	23	400	Mather,	1	50
Beckey,	3	100	Chloe,	34	375
Peggy,	1	50	Maria,	35	375
Binah, (nurse)	53	150	London,	21	450
Young Binah,	20	350	Jamima,	20	400
Matilda,	14	300	Charity,	51	125
Old Charlotte,	47	250	Lunar,	71	00
Young Charlotte,	12	275	Sampson,	8	200
Billy, (miller and carpenter)	32	800	Minda,	35	375
Caty,	32	400	Dinah,	3	100
Martha,	9	200	Toney, (carpenter)	55	250
Old Charles,	70	50	Betsey,	26	400
Nancy,	45	200	Ben, (carpenter)	35	250
Scotland,	46	350	Abraham,	50	250
Minty,	26	400	Rachel, (cook)	51	200
Rinah,	9	200	Young Nancy,	14	300
William,	8 mos.	50	Hector,	9	250
Ned,	60	100	Friday,	24	500
Patty,	53	150	Binkey,	24	400
Young Patty,	9	200	Hannah,	24	400
Stephen,	25	500	Paris,	1	50
Binah,	23	400	Maria,	24	400
Jarvis,	1	50	Alexander, (cooper)	34	450
Mary,	60	100			
Charles,	20	425	Say 50 negro slaves,		$14,000

220 acres of rice land, cleared and under bank, at $75 per acre,	$16,500 00
80 acres uncleared and swamp, at $35 per acre,	2,800 00

Island opposite to P. T. Marchant's settlement, containing 35 acres,	$ 750 00	
Rice mill on said estate,	7,500 00	
		27,550 00
Land in Chatham county,	800 00	
Do Munroe do	500 00	
		1,300 00
77 barrels good rice, in town,	1,181 95	
13 barrels small rice,	99 71	
1032 bushels toll rice, in rough,	644 00	
5535 do. crop rice, 1830, in rough,	3459 37	
85 rice tierces,	42 50	
		5,427 53
Plantation tools,	30 00	
2 iron ploughs,	24 00	
2 harrows,	1 00	
3 trenching ploughs,	4 50	
2 two-legged trenching ploughs,	4 00	
1 bag of feathers,	7 50	
		71 00
1 sideboard,	7 00	
1 wash-stand,	1 00	
1 set of drawers,	7 00	
2 tables,	7 00	
Dish covers,	1 00	
Retort and pipes, to make and convey gas,	100 00	
1 flat,	100 00	
1 old flat,	7 50	
1 canoe,	20 00	
2 blacksmith's bellows, 1 vice, and 1 anvil,	16 00	
5 head of cattle, at $6 per head,	30 00	
Carpenters' tools,	15 00	
11 wheelbarrows, at $2 50,	27 50	
		339 00
Cash in factor's hands, (Jos. H. Burroughs,)		102 00
		$48,789 53

Savannah, 18th February, 1831.

(Signed) R. W. STILES,
THOS. YOUNG,
HENRY M'ALPIN.

Filed at rules, 6th May, 1833.

GEO. GLEN, *Clerk.*

Exhibit C.

Henry M'Alpin and Norman Wallace agree to hire the negroes on Gowrie plantation, belonging to the estate of James H. M'Leran, deceased, from James Wallace, administrator of said estate, from and after this date, until the first

Tuesday in January next, at the rate of fifty dollars pr. annum—say for thirty full working hands, out of the gang of fifty old and young—they, the said Henry M'Alpin and Norman Wallace agreeing to defray all expenses of their maintenance and clothing during the time above specified, with doctors' bills and overseers' wages—it being understood that the provisions presently on the plantation should contribute towards the support of the negroes. And he, the said James Wallace, administrator aforesaid, with the consent of the court of ordinary of Chatham county, agrees on his part to the fulfilment of the conditions above specified.—*Savannah, 1st May*, 1832.

(Signed) HENRY M'ALPIN,
NORMAN WALLACE.
JAMES WALLACE, *Adm'r.*

At a regular circuit court of the United States for the sixth circuit and district of Georgia, held at the court house in Savannah, on the fifteenth day of May, 1833, being a day of the term of the said court, before the honorable William Johnson and Jeremiah Cuyler, presiding judges.

ARCHIBALD M'CLELLAN and wife, Complainants,
and
JAMES WALLACE, admr., JAS. H. M'LERAN, Defendant, } IN EQUITY.

JOHN M'LEARN et al., Complainants,
and
JAMES WALLACE, admr., JAS. H. M'LERAN, Defendant. } IN EQUITY.

Consent, order to bring title deeds into the registry, and deposite money, &c.

The defendant having filed his answers to the above two bills of complaint, and having moreover filed a bill on the equity side of this court against the complainants, in which he alleges that the claims of the complainants are conflicting in their nature, and can more properly be settled and adjusted by the interpleading of the complainants respectively, and in which he prays that he may be allowed to bring into court the fund in dispute, consisting of two bonds of Charles J. Manigault, each for five thousand dollars, the certificates of deposite of two several sums of five thousand dollars each, in bond on interest, and the sum of twelve hundred and ninety-eight 48-100 dollars in cash, and the title deeds to two tracts of land; and that the complainants may be compelled to interplead, and thereby have their respective rights to this fund determined. It is, on motion of the solicitor for the defendant, and with the consent of the respective solicitors of the complainants, ordered that the title deeds of the tract of pine land in Chatham county, and of the tract of land in county, be brought into the registry of this court; that the said sum of twelve hundred and ninety-eight 48-100 dollars be by the defendant deposited in one of the banks in Savannah on interest, and that he duly endorse over and deliver the certificate of such deposite, and the two other certificates aforementioned, to W. W. Gordon, esq., to be by him retained, subject to the order of this court, and that he, the defendant, assign and deliver to the said W. W. Gordon the said two bonds of the said Charles J. Manigault, and the mortgage to secure the same, to be by the said W. W. Gordon collected and held subject to the order of this court. And it is further ordered, that the complainants, Archibald M'Clellan and wife, and the complainants, John M'Learn and al., do answer respectively the said bill of interpleader within six

months, and thereby exhibit to the said court their respective rights and claims to said fund. *15th May*, 1833.

UNITED STATES OF AMERICA,
District of Georgia.

Commission to examine witnesses in South Carolina.

In the sixth circuit court of the United States for the District of Georgia.—In Equity.

GEO. GLEN, *Clerk.*

To John G. North, Eleazer Waterman, and Thomas S. Shaw, esquires, greeting:

Know ye, that in confidence of your prudence and fidelity, you are hereby appointed, and, by these presents, are vested (any two or more of you) with full power and authority diligently to examine all witnesses whatsoever upon certain interrogatories to be exhibited to you in a certain cause, pending and to be tried in the said court, wherein Archibald M'Clellan and wife are complainants, and John M'Lean and others are defendants, as well on the part of the said complainants, as on the part of the said defendants, or either of them: and it is required of you, or any two or more of you, that on certain days, and at certain places, by you to be appointed for that purpose, you do cause the said witnesses to come before you, and then and there examine them and each of them upon the said interrogatories on their respective corporal oath, first taken before you (or any two or more of you) on the Holy Evangelists; and that you do take such, their examinations, and reduce them into writing; and when you shall have so taken them, you are to send the same to the clerk of the sixth circuit court of the United States for the district of Georgia, at Savannah, closed up and under your seals, or the seals of any two of you, distinctly and plainly set, together with the said interrogatories, and this writ; and further, that you, and each of you, before you act in, or be present at the swearing or examining any witness or witnesses, do severally take the oath first specified in the schedule hereto annexed; and full power is given you, or either of you, jointly or severally, to administer such oath to the rest, or any other of you, upon the Holy Evangelists. And it is further required of you, that all and every of the clerk or clerks employed in taking, writing, transcribing, or engrossing the deposition or depositions of witnesses to be examined by virtue of these presents, shall, before he or they be permitted to act as clerk or clerks as aforesaid, or be present at such an examination, severally take the oath last specified in the said schedule annexed; and full power and authority is also given you, or any of you, jointly or separately, to administer such oath to such clerk or clerks upon the Holy Evangelists.

Witness, the honorable JOHN MARSHALL, Chief Justice of the United States, this thirteenth day of February, in the year of our Lord one thousand and thirty-four, and year of American Independence.

RICH. W. HABERSHAM,
Sol'r for Compl't.

The Commissioner's Oath.

Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses, produced and examined by virtue of the above commission, upon the interrogatories now produced and left with you:

And you shall not publish, disclose, or make known to any person or persons whatsoever, except to the clerk or clerks by you employed, and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners, in the said commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the said court. So help you God.

JNO. G. NORTH,
E. WATERMAN,
THOMAS L. SHAW.

The Clerk's Oath.

Clerk's Oath. You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe, and engross the depositions of all and every witness and witnesses produced before and examined by the commissioners, or any of them, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any of them, to take, write down, or engross the said depositions, or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever, the contents of all or any of the depositions of the witnesses, or any of them, to be taken, wrote down, transcribed, or engrossed by you, or whereto you shall have recourse, or be any wise privy, until publication shall pass by rule or order of the said court. So help you God.

D. A. BOKEE.

Interrogatories on behalf of A. M'Clellan and wife.

THE UNITED STATES OF AMERICA.

Sixth Circuit Court, Georgia District..

ARCHIBALD M'CLELLAN, et uxor, *vs.* JOHN M'LEARN, et als. } In EQUITY.

Interrogatories to be administered to Thomas Skrine, Thomas Ford, Margaret Ford, and Robert Lester, witnesses, residing in the State of South Carolina, to be examined on the part and behalf of the complainants, Archibald M'Clellan and wife.

1. Did you know or have you ever heard of the late James Henlen M'Learn, of Chatham county, in Georgia?

2. Do you know the complainants, Archibald M'Clellan, and Mary M'Clellan, his wife, of St. James, Santee, in the State of South Carolina?

3. Look at the pedigree hereto annexed, and say whether Benjamin Henlen, of Beach river, was a brother of William Henlen? Do you know what were the names of the father and mother of the said Benjamin and William Henlen?—Declare.

4. Had the said Benjamin and William Henlen any brothers or sisters? If so, how many, and what were their names? Are any of the said brothers or sisters now living? If not, declare as nearly as you can, about what time each of them died, what has become of them, or when were they heard of last? Did any of the said brothers or sisters of Benjamin and William Henlen leave descendants? If so, declare their names, and whether any of and which of them are now living?

5. When or about what time did the said Benjamin Henlen die? Did he leave any children? If so, how many, and what were their names? Are any

of the said children now living? If not, about what time did each of them die? Did any of the said children of Benjamin Henlen leave descendants? Declare all that you know as nearly as you can recollect, without requiring certainty as to dates and times.

6. If you say that the said Benjamin Henlen had a daughter named Sarah, declare whether she married Archibald M'Leran, and where and about what time they were married? Was there any issue of the said marriage, and what was the name of such issue?

7. Did the said William Henlen, the brother of Benjamin Henlen, leave any children? If so, declare their names; state whether the complainant, Mrs. Mary M'Clellan, is one of them, and state what has become of the others, and when they died?

8. State the relationship between Sarah M'Leran, the mother of James Henlen M'Leran and Mrs. Mary M'Clellan, the wife of Archibald M'Clellan, the complainant.

9. Declare all that you know further, which may tend to show that the said Mary M'Clellan was, at the time of the death of the said James Henlen M'Leran, the nearest relative living in South Carolina of the said James Henlen M'Leran; and state if you know where she was born and has resided.

10. If in answer to the sixth interrogatory you say that Sarah Henlen married Archibald M'Leran, then say what were the circumstances as to property of the said Archibald at the time of such intermarriage, and also whether at that time the said Sarah Henlen was possessed of any property as her own, and of what nature and to what amount previous to such intermarriage. State all you know.

RICH. W. HABERSHAM,
Sol'r for Complt.

Filed this 22d Jan'y, 1834.—GEO. GLEN, Clk.

We acknowledge service of a copy, this 23rd Jan'y, 1834.

BERRIEN & CUYLER,
Compl't's Sol'rs.

Answers to Interrogatories propounded to Robert Lester.

UNITED STATES OF AMERICA.
Sixth Circuit—Georgia District.

ARCHIBALD M'CLELLAN et uxor
vs.
JOHN M'LERAN et al. } In EQUITY.

Robert Lester's answers to interrogatories.

Answer 1st. I knew him in youth and in manhood.

Answer 2d. Yes.

Answer 3d. I have always heard so. I do not know what were the names of the father and mother of Benjamin and William Henlen.

Answer 4th. Yes; they had one brother, and I believe his name was John. They had no sisters that I know of. John died before my recollection, and left a son whose name was also John, who died in the neighborhood of Black Mingo, between twenty and thirty years ago, leaving no children.

Answer 5th. Benjamin Henlen died about forty years ago, leaving six children, Benjamin, James, Elizabeth, William, John, and Sarah. There are none now living. Sarah died last, and has been dead about twenty-five years. Sarah was the only one that left a descendant, whose name was James M'Learn.

Answer 6th. Yes; she did marry Archibald M'Leran at the house of Mrs.

Dupre, in Williamsburg district, in 1806 or 1807. She had one child whose name was James, as I have already said.

Answer 7th. William Henlen left two daughters, Sarah and Mary. Sarah married Dr. George Ford, and is dead; and Mary is now the wife of Archibald M'Clellan, the complainant.

Answer 8th. They were first cousins, being brothers' children.

Answer 9th. Yes, I believe that Mrs. M'Clellan is the nearest relative living in South Carolina of the said James Henlen M'Leran. She was born on Black Mingo, and lived in the family of Mr. Ford, on Black river, till her marriage with Mr. M'Clellan, and then removed to Santee.

Answer 10th. When Sarah Henlen married Archibald M'Leran he was worth nothing; she had four negroes, and acquired fifteen or twenty more by the death of her brothers William and John.

ROBERT LESTER.

Answers to Cross Interrogatories.

Answer 1st. I will be fifty-six next August, and I am a planter. I was born within twenty miles of this place, on Black river, and I lived there until I was twenty-seven years old. I then removed into Williamsburg district, where I have resided ever since.

Answer 2d. I acquired the knowledge of the marriage by being at the wedding.

Answer 3d. I saw him and knew him from his birth until he was three years old; he was born in Georgetown, and his mother dying in child-bed he was taken by Mrs. Dupre into Williamsburg district, and lived within one mile of me until he was three years old, when he was taken by his father into Georgia. I saw him again when he visited this neighborhood in 1828 or 1829. I saw him, James M'Leran, before he was a week old; his mother was a relative of mine, and I am perfectly satisfied Archibald M'Leran was never married to any one else.

Answer 4th. He lived in Georgetown, South Carolina, and I believe he removed to Georgia in 1809 or 1810. He probably resided 8 or 10 years altogether in South Carolina.

Answer 5th. By relationship and long acquaintance with the family.

ROBERT LESTER.

Cross Interrogatories on behalf of Jno. M'Learn et al.

In the Sixth Circuit Court of the United States for the District of Georgia.

JOHN M'LEARN et al.
vs.
ARCHIBALD M'CLELLAN et uxor et al. } In EQUITY.

Cross interrogatories to be propounded to Thomas Skrine, Thomas Ford, Margaret Ford, and Robert Lester, witnesses in behalf of the defendants.

The complainants object to the third direct interrogatory, on the ground that it is a leading question, subject to such exception. They propound these interrogatories:

1. What is your age, your occupation, your place of present residence, and your former place or places of residence?

2. If you answer that Archibald M'Leran married a daughter of Benjamin Henlen, state by what means you acquired your knowledge.

3. Did you ever, when or where, see James H. M'Leran, late of Chatham coun-
, the intestate? How do you know of what marriage he was issue?

. Where did Archibald M'Leran live? Did he live in South Carolina?
n did he remove to Georgia? How long did he live in Carolina?

4 32.

5. If you say that the wife of Archibald M'Clellan was related to James H. M'Learn, state the means by which you came to a knowledge thereof.

BERRIEN & CUYLER,
Sol'rs for Compl't.

Filed 12th Feb'y, 1834. GEO. GLEN, Clk.

Answers to Interrogatories propounded to Thomas Ford.

SAME *vs.* SAME.

T. Ford's answers to interrogatories in chief.

Answer 1st. I know him and have seen him.

Answer 2d. I know them perfectly well; I am related to his wife.

Answer 3d. Cannot answer.

Answer 4th. Cannot answer.

Answer 5th. I do not know about what time Benjamin Henlen died. I always understood that Sarah, who married Archibald M'Leran, was his daughter.

Answer 6th. Archibald M'Leran told me he married Sarah Henlen, and that he had a son by her. In 1828 or 1829 I saw James Henlen M'Leran, who told me that he was the son of Archibald and Sarah M'Leran.

Answer 7th. Yes; he left two daughters, Mary and Sarah, who were raised in my father's family. Mrs. Mary M'Clellan is one of them, and is now living; the other married my brother, Dr. George Ford, and died about 6 or 7 years ago.

Answer 8th. Has always understood they were first cousins, being brothers' children: learnt this in the family.

Answer 9th. James Henlen M'Leran told me the purport of his visit to Carolina was to find out his mother's relations, and that he had only found his two cousins, Mrs. George Ford and Mrs. Mary M'Clellan; he asked me if I knew of any others, and I told him no. Mrs. Mary M'Clellan was born near Black Mingo, and resided on Black river until her marriage to Archibald M'Clellan, when she removed to St. James, Santee.

Answer 10th. Archibald M'Leran at the time of his marriage was worth nothing; he told me after his marriage that he had got about twenty negroes by his marriage.

THOMAS FORD.

Answer of Thomas Ford to Cross Interrogatories.

T. Ford's answers to cross interrogatories.

Answer 1. I am in my fifty-first year. I am a planter. I have always resided on Black river, except while at the north receiving my education.

Answer 2. He told me so.

Answer 3. Answered in 6th direct interrogatory.

Answer 4. He lived in this district 8 or 9 years. I think he removed to Georgia in 1808 or 1809.

Answer 5. Answered in 9th direct interrogatory.

THOMAS FORD.

Commissioners' Certificate of Execution of Commission.

SOUTH CAROLINA, *Georgetown District.*

We do hereby certify, that this sheet of paper contains the depositions of Robert Lester and Thomas Ford, who were duly sworn and examined by us in the case of Archibald M'Clellan et ux v. John M'Learn et al. Thos. Skrine did not attend us, and Mrs. Margaret Ford is dead.

Witness our hand and seals, this 10th day of April, 1834.

JNO. G. NORTH. [L. S.]
ELEAZER WATERMAN. [L. S.]
THOMAS L. SHAW. [L. S.]

Hearing of Cause, May Term, 1834.

Sixth Circuit and District of Georgia, viz.:

And now on this day, that is to say on the twelfth day of May, in the year of our Lord one thousand eight hundred and thirty-four, being a day of the term of the said court held in Savannah on the Thursday after the first Monday in May, in the year aforesaid, before the honorable Jerem'h Cuyler, district judge presiding at the said court, came the said parties as follows, to wit:

JOHN M'LEARN et al., Complainants,
and
JAMES WALLACE, admr. et al., Defts. } Bill in Equity.

ARCHIBALD M'CLELLAN and MARY his wife, Complts.
vs.
JAMES WALLACE, admr. et al., Defts. } Bill in Equity.

JAMES WALLACE, admr., Complt.
and
ARCH'D M'CLELLAN and wife et al., Defendants. } Bill of Interpleader.

Deeds on Record, Superior Court, Chatham County, adduced in evidence.

Bills, Answers, &c. read.—Deed from Peter T. Marchant, attorney for Elizabeth Ann Williamson, to A. M'Leran, for a tract of land on Argyle Island and a small island containing 30 acres, dated 31st Janu'y, 1813, letters F. F. page 321; and Deed from James H. M'Leran, J. Wallace, and H. M'Alpin to Wm. J. Scott, dated 1st May, 1828, county records, letters O. O. page 500, read in evidence.

Admission of the relationship of Jno. M'Learn et al. to Js. H. M'Leran.

Between JOHN M'LEARN et al., Complainants,
and
JAMES WALLACE et al., Defendants, } In EQUITY.

It is admitted in the above cause that the complainants severally were related to the said James H. M'Learn or M'Leran, in such manner as is alleged in the complainants' bill, and in their answer to the bill filed by these defendants.

RICH. W. HABERSHAM,
Sol'r for Archibald M'Clellan and wife.

Sixth Circuit and District of Georgia, viz.:

And now on this day, that is to say on the seventeenth day of May, in the year of our Lord eighteen hundred and thirty-four, being a day of the term of the said court, held in Savannah, on the Thursday after the first Monday in May, in the year aforesaid, before the honorable Jeremiah Cuyler, presiding judge of the said court, came the said parties, as follows, to wit:

JOHN M'LEARN et al., Complainants,
and
JAMES WALLACE et al., Defendants, } In EQUITY.

ARCH'D M'CLELLAN and wife, Complainants,
and
JAMES WALLACE admr., et al., Defendants. } In EQUITY.

JAMES WALLACE, admr., Complainant,
and
ARCHIBALD M'CLELLAN and wife et al., Defendants. } In EQUITY.

Extract and Certificate of Clerk Circuit Court of Satisfaction of Judgment against A. M'Leran.

The following certificate was read in evidence:

Sixth Circuit Court United States, District of Georgia.

PETER T. MARCHANT
vs.
ARCHIBALD M'LERAN. } Debt.

Judgment confessed 8th May, 1816, for penalty $20,000.
Satisfied, 10th May, 1828.

I, George Glen, clerk of the said court, do hereby certify that satisfaction has been duly entered of record on the above judgment. In witness whereof I have hereunto set my hand and the seal of the said court, this 15th day of May, A. D. 1834. GEO. GLEN, *Clerk.*

The court met pursuant to adjournment on the nineteenth day of May, eighteen hundred and thirty-four. Present the Honorable Jeremiah Cuyler.

JOHN M'LEARN et al.
vs.
JAMES WALLACE, admr. of JAS. H. M'LERAN et al. } Bill in Equity.

ARCH'D M'CLELLAN and wife,
vs.
JAMES WALLACE, admr., and JOHN M'LEARN et al. } Bill in Equity.

JAMES WALLACE, admr., JAS. H. M'LERAN,
vs.
ARCHIBALD M'CLELLAN and wife and JOHN M'LEARN and others. } Bill of Interpleader.

Time allowed to appeal.

By consent of solicitors in the above cases it is ordered, that this decree in these cases be filed within ninety days, and be then considered as filed tunc pro nunc as of this term, reserving to each party the right of praying an appeal within twenty days after such decree shall be filed, which shall be considered as an appeal prayed in open court as of term time.

19th May, 1834.

Reasons of Decree.

In the Circuit Court of the United States, District of Georgia, May Term, 1834.

ARCHIBALD M'CLELLAN and wife, Complainants,
and
JAMES WALLACE, admr. of JAS. H. M'LERAN and JOHN M'LEARN et al., Defendants. } In Equity Bill for account, &c.

JOHN M'LEARN et al., Complainants,
and
JAMES WALLACE, admr. of JAS. H. M'LERAN et al., Defendants.
} Bill for account, distribution, &c.

The above two cases having been argued together at the bar, I shall consider them together, because in fact they are very much dependent on each other. From the pleadings and evidence, i appears that James Hendley M'Leran, a citizen of the United States, died some time in the year eighteen hundred and thirty, intestate, leaving a considerable estate, real and personal, and the complainants in these two bills named *named*, his next of kin, as therein stated. It further appears that the complainants, in the first bill mentioned, are citizens of the United States, residing in South Carolina, and those in the second bill mentioned are aliens, and subjects of the King of Great Britain. The first question therefore that presents itself is, Can aliens inherit real estate in Georgia? By an act of the Legislature of the State of Georgia, passed on the 25th February, 1784, the common law of England was declared to be of force in Georgia.—Watk. Dig. 289. I take occasion to observe, that the common law of England has always been of force in Georgia, unless altered by the constitutions or statutes of the state. But it is contended that by the laws of Georgia aliens can take and receive the proceeds of real estate, if not real estate itself, where the same would have been inherited by them if they had not been aliens. This idea is based upon the introduction, for the first time, of the following words "that when any person holding real and personal estate shall depart this life intestate, the said estate, real and personal, shall be considered altogether of the same nature and upon the same footing," into an act of the 22d Feb'y, 1785, Watk. 414; and ever since that time the same words have been used in the laws of Georgia. It is to be observed that as soon as the people of Georgia threw off their allegiance to the government of England, and declared themselves independent, they formed a constitution for themselves, (Watk. 7,) and by the 51st article thereof they destroyed the right to entail estates, and pointed out the manner of distributing estates.

This article of the constitution of 1777, with little alteration, was inserted in the constitution of 1789, Watk. 29, article 4th, sect. 6. Since then the manner of distributing estates is pointed out by law. It was in the act of the 23d Dec., 1789, Watk. 414, for carrying into effect 6th section of the 4th article of the constitution of 1789, the words above mentioned were first introduced into the laws of Georgia, and I am satisfied were solely intended to apply to the manner of distributing estates, and had no relation to the rights or disabilities of aliens. In proof of such construction the act of 5th Dec. 1805 (long after real and personal property were put on the same footing) could not take real estate, they cannot now do so. I conclude, therefore, that aliens cannot, either by the common law or the laws of Georgia, take or hold real estate in this State. But it is contended further, that Archibald M'Leran, the father of James H. M'Leran, was at the time of his death indebted for a tract of land which A. M'Leran by will devised to his son James H. M'Leran, and is the most valuable part of the real estate now in controversy: that this debt remains a lien on the said land for its purchase money, and ought to be paid out of the proceeds of the said land. I take it there never was a lien on this land. The vendor took other security—a bond which was prosecuted to judgment, and the judgment on the bond has been paid, and satisfaction entered up on record. A mortgage is alleged to have been given to secure the payment. True, it is stated in one of the bills, but the defendant Wallace answers he knows nothing of such a mortgage, and no proof of the existence of a mortgage has been offered to the court. James H. M'Leran

having died intestate, leaving debts due, one of which was secured by mortgage executed by him on land and negroes, it is contended that the real estate is the proper fund to pay the mortgage debt in preference to the personal estate. Nothing can be better settled than that in the payment of debts the personal estate is first to be applied, and I see no cause in this case to disturb the legal mode of discharging the debts in their proper order.

There is no reason to suppose the intestate intended to make the land the primary fund to pay the mortgage, for by mortgaging real and personal estate together does not have such an effect; there was no equitable claim resting on the land by deed, will, act, or declaration of the deceased, nor does the nature of the case point to such exclusive application of the funds of the estate.

Upon the whole I am of opinion that the complainants, Mary M'Clellan and Archibald M'Clellan her husband, are entitled to the whole of the real estate of which James H. M'Leran died seized and possessed; but the same having been sold, I shall allow them the money for the part sold, and the real estate unsold; and to the complainants John M'Leran or M'Learn and others named in their bill, the remaining part of the estate of James H. M'Leran, deceased, after the payment to Mary and Archibald M'Clellan, and the transfer of the unsold real estate.

Decrees accordingly.

Decree of A. M'Clellan and wife against Js. Wallace et al., Defendants.

ARCHIBALD M'CLELLAN and wife, Complainants, *and* JAMES WALLACE, admr. of JAS. H. M'LERAN and JOHN M'LEARN et al., Defendants.	Bill for account, &c. Decree.

The solicitors for the complainants and the defendants having been heard, and the case considered, it is ordered, adjudged, and decreed that there be paid by the defendant James Wallace, administrator, within sixty days from this date, to the complainants in this bill mentioned, the sum of $19,739 13, say nineteen thousand seven hundred and thirty-nine dollars thirteen cents, being the amount the Argyle plantation sold for, less the costs of this court and the interest accumulated thereon, and within the same time deliver over to them the title deeds to the two unsold tracts of land in Chatham county and Munroe county, of which James H. M'Leran died seized and possessed.

15th July, 1834. J. CUYLER.

Decree: Jno. M'Leran et al., Complainants, and Jas. Wallace, admr. et al.

JOHN M'LEARN et al., Complainants, *and* JAMES WALLACE, admr. of JAMES H. M'LERAN et al., Defendants.	Bill for account, distribution, &c. Decree.

The solicitors for the complainants and defendants having been heard, and the case considered, it is ordered, adjudged, and decreed that there be paid by the defendant James Wallace, within sixty days from this date, to the complainants in this bill mentioned, the sum of $1,557 35, say fifteen hundred and fifty-seven dollars and thirty-five cents, and interest accumulated, being the amount of moneys arising from the sales of the personal estate of James H. M'Leran, less the costs of this court, and within the same time deliver over to them the remaining

unsold personal estate of the said deceased, and all evidences of debts due to the said deceased, or to his estate.

J. CUYLER.

July 15th, 1834.

Prayer and Order for an Appeal by the Complainants, John M'Learn et al., aliens.

In the Sixth Circuit Court of the United States for the District of Georgia.

John M'Learn et al., Complainants, *and* James Wallace, administrator, Jas. H. M'Leran, alias M'Learn, et al., Defendants.	In Equity.
Archibald M'Clellan and wife, Complainants, *vs.* James Wallace, administrator of James H. M'Leran, et al., Defendants.	In Equity.
James Wallace, administrator of Jas. H. M'Leran, Complainant, *and* John M'Learn et al., and Archibald M'Clellan and wife, Defendants.	In Equity. Bill of Interpleader. Decree.

And the said John M'Learn and others, complainants in the bill first above mentioned, being dissatisfied with the decree and judgment of the court in the above causes, now, by their solicitors, Berrien & Cuyler, come and pray an appeal from the said decree and judgment of the circuit court in the premises, to the supreme court of the United States, and approved security having been given in terms of the law, the same is granted accordingly, as of the term of May last past.

J. CUYLER.

July 28th, 1834.

Bond of John M'Learn et al., on Appeal from Circuit Court to the Supreme Court United States.

United States of America, }
District of Georgia. }

Know all men by these presents, that we, John M'Learn, Mary M'Learn, George M'Kay, Janet McKay his wife, and Mary M'Learn, the elder, of Scotland, in the kingdom of Great Britain, by Norman Wallace and Henry McAlpin, of Chatham county, in the State of Georgia, their lawful attorneys, and the said Norman Wallace and Henry McAlpin are held and firmly bound unto Archibald M'Clellan, and Mary M'Clellan his wife, of the State of South Carolina, and James Wallace, administrator of James H. M'Leran, in the penal sum of two thousand five hundred dollars, to be paid to the said Archibald M'Clellan

and Mary M'Clellan, and James Wallace, administrator as aforesaid, their executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Dated at Savannah the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and thirty-four.

Whereas the said John M'Learn, Mary M'Learn, George M'Kay, and Janet M'Kay, his wife, and Mary M'Learn, the elder, did lately file their bill of complaint on the equity side of the circuit court of the United States, for the district of Georgia, against the said Archibald M'Clellan and Mary, his wife, and the said James Wallace, administrator as aforesaid, which said bill came on to be heard before the said court in the term of May last; and the said court did make a decree in the said cause, with which the said complainants, John M'Learn and others, are dissatisfied, and desirous to appeal therefrom to the Supreme Court of the United States.

Now the condition of this obligation is such, that if the above bound John M'Learn, Mary M'Learn, George M'Kay, and Janet M'Kay, and Mary M'Learn, the elder, complainants as aforesaid, their executors or administrators, shall abide and perform the decree of the said supreme court, and answer all damages and costs which may be decreed against them, in case they fail to make good their said appeal, then this obligation to be void, or else to be and remain in full force and virtue.

N. WALLACE, Attorney, [L. S.]
For John M'Learn and others.
HENRY M'ALPIN, Attorney, [L. S.]
For John M'Leran and others.
N. WALLACE. [L. S.]
HENRY M'ALPIN. [L. S.]

Taken and acknowledged before me, this 25th day of July, 1834.

GEORGE GLEN, *Clerk.*

Security approved.

J. CUYLER.

Filed 30th July, 1834.

GEORGE GLEN, *Clerk.*

UNITED STATES OF AMERICA, *District of Georgia,* } ss.

I, George Glen, clerk of the circuit court of the United States, for the district of Georgia, do hereby certify, that the preceding and annexed writing is a true and perfect transcript of the record and proceedings remaining in said court in the causes therein mentioned, taken from and by me, carefully compared with the originals filed and being of record in my office.

In witness whereof, I have hereto set my hand, and affixed the seal of the said circuit court, this first day of January, in the year of our Lord one thousand eight hundred and thirty-five.

GEORGE GLEN, *Clerk.*

UNITED STATES OF AMERICA, *District of Georgia,* } ss.

I, Jeremiah Cuyler, judge of the district court of the United States for the district of Georgia, do hereby certify, that George Glen, who signed the within

certificate, is and was at the time of signing the same the clerk of the district and circuit courts of the United States for the district of Georgia; that full faith and credit ought to be given to his acts and attestations as such, and that his said certificate and authentication of the foregoing transcript is in due form.

In witness whereof, I have hereto set my hand, this first day of January, in the year of our Lord 1835. J. CUYLER, D. J.

Archibald M'Clellan and Wife vs. John M'Learn and others.

It was the agreement of the counsel on both sides that the within papers should be added to and made part of the record, entered into at the instance of the appellee.

JN. MACPHERSON BERRIEN.

Washington, 31st Jan., 1835.

Copy of Deeds read in Evidence on hearing of the Cause.

STATE OF GEORGIA.

This indenture, made the thirty-first day of January, in the year of our Lord one thousand eight hundred and thirteen, between Elizabeth Ann Williamson by her attorney, Peter T. Marchant, of Charleston, esq., of the first part, and Archibald McLeren, of the county of Chatham and state of Georgia, planter, of the second part, witnesseth, that the said Elizabeth Ann Williamson, for and in consideration of the sum of fourteen thousand dollars, to her in hand paid by the said Archibald McLeren, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and thereof and of and from every part and parcel thereof, the said Elizabeth Ann Williamson doth acquit, release, and discharge the said Archibald McLeren, his heirs, executors, and administrators; by these presents she the said Elizabeth Ann Williamson hath granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, and confirm unto the said Archibald McLeren, and to his heirs and assigns, all that tract of land on Argyle Island, containing three hundred acres, including marsh, which tract is bounded northwardly by land of the said Elizabeth Ann Williamson, southwardly by land of William Akin, eastwardly by Savannah back river, and westwardly by Savannah middle river; and also a small island in the last mentioned river, containing thirty acres, opposite the first mentioned land and land belonging to the estate of the late Richard M. Stites, as by a reference to *to* John McKinnon's resurveying, dated the sixth of January, in the year eighteen hundred and fourteen, will clearly appear; together with all and singular the houses, outhouses, edifices, buildings, stables, yards, gardens, liberties, privileges, easements, commodities, emoluments, hereditaments, rights, members, and appurtenances whatsoever thereunto belonging, or in anywise appertaining; and the reversions and reversions, remainder and remainders, rents, issues, and profits, and all the estate, right, title, interest, property or possession, claim and demand whatsoever, in law or equity, the said Elizabeth Ann Williamson of, and in, or to, the same or any part or parcel thereof, with the appurtenances; to have and to hold the said several tracts

of land, and all and singular other the premises hereby granted, bargained, sold, alienad, and confirmed, with the hereditaments and appurtenances, unto the said Archibald McLeren, his heirs and assigns, to the only use and behoof of the said Archibald McLeren, his heirs and assigns for ever; and to and for no other use, intent, or purpose whatsoever. And lastly, the said Elizabeth Ann Williamson and her heirs, the said several tracts of land and premises unto the said Archibald McLeren, his heirs and assigns, against Elizabeth Ann Williamson and her heirs, and against all and every other person and persons whatever, shall and will warrant and for ever defend by these presents. In witness whereof, the said Elizabeth Ann Williamson, by her said attorney, hath hereunto set her hand and seal the day and year first above written.

PETER T. MARCHANT, [L. S.]
Attorney for Elizabeth Ann Williamson.

Sealed and delivered in presence of
JNO. P. WILLIAMSON, *J. J. C. C. C.*
GEORGE W. COLLINS.

Recorded 13th Nov., 1815.

GEORGIA, *Chatham county.*

I, Robert W. Pooler, clerk of the superior court of the county of Chatham, in the State aforesaid, do hereby certify that the foregoing is a true copy of the record of said office. In testimony whereof, I have hereunto set my hand and affixed the seal of said superior court, this fifth day of January, Anno Domini eighteen hundred and thirty-five.

ROBERT W. POOLER,
Clerk S. C. C. C.

GEORGIA.

This indenture, made the first day of May, in the year of our Lord one thousand eight hundred and twenty-eight, between James H. McLeren, of Savannah, in the State of Georgia aforesaid, of the first part, and James Wallace and Henry McAlpin, of the county of Chatham, in the State aforesaid of the second part, and William J. Scott, of the same county and State, of the third part:—Whereas the said James Wallace and Henry McAlpin are the acting and qualified executors of the last will and testament of Archibald McLeren, late of the said county of Chatham, deceased, and the said William J. Scott is the assignee of a judgment recovered in the sixth circuit court of the United States for the district of Georgia, by one Peter T. Marchant, in the term of May, one thousand eight hundred and sixteen, against the said Archibald McLeren, on which various payments have been made; and the said James Wallace and Henry McAlpin are desirous of surrendering up and delivering over to the said James H. McLeren, the son and heir of the said Archibald McLeren, the whole of the estate of his said father, which came to their hands as executors aforesaid; which the said William J. Scott hath agreed they shall do, upon his the said James H. McLeren liquidating the said amount due on the said judgment, by a bond, payable as hereinafter mentioned, secured by a mortgage on the land and negro slaves hereinafter mentioned and described, being the property so delivered up by the said executor to the said James H. McLeren; and whereas, in conformity with said agreement, and understanding the said James H. McLeren hath executed his certain bond or writing obligatory, bearing even date with these presents, to the said William J. Scott, in the penal sum of thirty-five thousand six hundred dollars, conditioned for the payment of the sum of seventeen thousand eight hundred dollars, with interest from the date, in manner following, that is to say: the sum of four thousand four hundred and fifty dollars on the first day of May,

one thousand eight hundred and twenty-nine; the like sum of four thousand four hundred and fifty dollars on the first day of May, one thousand eight hundred and thirty; the like sum of four thousand four hundred and fifty dollars on the first day of May, one thousand eight hundred and fifty dollars on the first day of May, one thousand eight hundred and thirty-one; and the like sum of four thousand four hundred and fifty dollars on the first day of May, one thousand eight hundred and thirty-two: and also for the payment annually on the first day of May, in each and every year hereafter, of lawful interest from the date, upon and for the said sum of seventeen thousand eight hundred dollars, or such part thereof as from time to time shall remain unpaid, up and in full to the said first day of May in each and every year hereafter, as by reference to the said bond and condition thereof will more fully appear. Now this indenture witnesseth that the said James H. McLeran, for the better securing the payment of the said sum of money in the said bond mentioned, with interest thereon, and which bond is in liquidation and satisfaction of the said judgment of the said Peter T. Marchant against the said Archibald McLeren, and also for and in consideration of the sum of one dollar to him the said James H. McLeren, in hand paid at or before the sealing and delivery of these presents by the said William J. Scott, the receipt whereof is hereby acknowledged. He the said James H. McLeren, by and with the acquiescence of the said James Wallace and Henry McAlpin, and their consent, testified by their being parties to and executing these presents, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey, and confirm and deliver unto the said William J. Scott, his heirs, executors, administrators, and assigns for ever, all that tract or parcel of land situate, lying, and being on Argyle Island, in the county of Chatham, in the State of Georgia aforesaid, containing three hundred acres, including marsh, more or less, and bounded northwardly by land now or lately belonging to Elizabeth Ann Williamson, southwardly by land lately William Mein's, eastwardly by Savannah back river, and westwardly by Savannah middle river; and also a small island in the last mentioned river, containing thirty acres, more or less, opposite to the tract of land first above mentioned and described, and land belonging to the late Richard M. Stites, deceased, together with all and singular the edifices, buildings, rights, members, hereditaments, and appurtenances thereto belonging, or in anywise appertaining; and all the estate, right, title, interest, claim, and demand whatsoever, in law or equity, of him the said James H. McLeren, of, in, or to the said tract or parcel of land and the said island above described; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also the following negro slaves, being fifty-five in number, viz: Harry the driver, Polly, Becky, Binah, Sharloette and Matilda, Billy, Kitty, Matty, Louisa and Charity, Abraham, Rachel, Alleer, and London, Tony, Betsey, and Cuffy, Hesto, Patty, Jack, Binah, Maria and Little Patty, Minda, Binkey, Joe and Dinah, Brutus, Judy, Friday, Charloette and Samson, Mary, Ben, Charles, Maria, Chloe, Sukey, Billy, and Joseph, Stephen, Binah, Harry, and Hector, Charles, Nancy, and Jemmima. Scotland, Charity, Minty, Hannah, Catherine, Senah, Rinah, and Mary, with their future issues and increases of the female slaves; to have and to hold the said tract or parcel of land and the island before described, with the appurtenances and every of them and the said several negro slaves, with the future issue and increase of the females, unto the said William J. Scott, his heirs, executors, and administrators and assigns for ever; provided always, nevertheless, and it is the true intent and meaning of the parties to these presents, that if the said James H. McLeren, his heirs, executors, administrators, or assigns, or any of them shall and do well and truly pay or cause to be paid to the said William J.

Scott, his executors, administrators, or assigns, the sum of money and the interest thereon, in the condition of the before in part described bond or writing obligatory mentioned, and according to the tenor and effect thereof; that then and in such cases these presents and every matter and thing herein contained shall cease, be void, and no effect, and otherwise to remain in full force and virtue.—In witness whereof the parties aforesaid have hereunto set their hands and seals, the day and year first before written.

JAMES H. McLEREN. [L. S.]
J. WALLACE, [L. S.]
HENRY McALPIN, [L. S.]

Sealed and delivered in presence of

J. K. TEFFT, *Not. Pub.*
WILLIAM LAW.

Recorded 12th May, 1828.

GEORGIA, *Chatham county.*

I, Robert W. Pooler, clerk of the superior court of the county of Chatham, in the State aforesaid, do hereby certify that the foregoing and within is a true copy of the record of said office. In testimony whereof, I have hereunto set my hand and affixed the seal of said superior court this fifth day of January, Anno Domini eighteen hundred and thirty-five.

[SEAL.] ROBERT W. POOLER, *Clk. S. C. C. C.*

UNITED STATES OF AMERICA, } *ss.*
Sixth Circuit, and District of Georgia, }

I, George Glen, clerk of the circuit court of the United States for the district aforesaid, certify that the two deeds, of which the aforesaid are copies, were read in evidence by the solicitors for Archibald M'Clellan and wife, on the hearing of the cases of Archibald McClellan and wife vs. John McLearn and others before the said court, and that the said copies were omitted in the transcript of the papers certified by me to the Supreme Court of the United States. In witness whereof I have hereunto set my hand and affixed the seal of the said court this sixth day of January 1835.

[SEAL.]

Sixth Circuit, District of Georgia.

I certify that the certificate of George Glen to the aforegoing document is in due form. Witness my hand this seventh day of January, 1835.

J. CUYLER, D. J.

UNITED STATES OF AMERICA.
State of Georgia, County of Chatham.

To all to whom these presents shall come:

I, John C. Nicoll, judge of the superior court of the county of Chatham, in the State of Georgia, do hereby certify that Robert W. Pooler, whose name and signature appear subscribed to the foregoing certificate aselerk of the superior court of Chatham county, is now, and was at the time of granting the same, clerk of the superior court of the county of Chatham, in the State of Georgia; that to all of his official acts and attestations, as such; full faith and credit are and ought to be had and given in and out of judicature; that the seal thereto annexed is the seal of the superior court aforesaid; that the said superior court is a court of

record, and that the attestation aforesaid is in due form. And I further certify, that there is no chief justice of the said court.

In testimony whereof, I have hereto set my hand at Savannah, the seventh day of January, in the year of our Lord one thousand eight hundred and thirty-five.

JNO. C. NICOLL,

Judge Superior Court of State of Georgia for Chatham county.